84-196

Office-Supreme Court, U.S.
FILED
AUG 6 1984
ALEXANDER L. STEVAS,
CLERK

No. 84—

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ROSEMARY FURMAN
d/b/a Northside Secretarial Service,

Appellant

v.

THE FLORIDA BAR,

Appellee.

On Appeal from the Supreme Court of Florida

JURISDICTIONAL STATEMENT

ALAN B. MORRISON
(Counsel of Record)
JOHN CARY SIMS
Public Citizen Litigation Group
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

WILLIAM J. SHEPPARD
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

ATTORNEYS FOR APPELLANT

THE CASILLAS PRESS, INC. 1717 K Street N.W. • Washington, D.C. • 223-1220

8'100

QUESTIONS PRESENTED*

1. May a state, consistent with the Sixth Amendment to the Constitution, deny an individual a jury trial in an indirect criminal contempt case, where the maximum penalty established in a rule of court is a fine of $2500, five months in jail, or both?

2. May an individual who is not a lawyer and who is charged with indirect criminal contempt for engaging in the unauthorized practice of law, for which the penalty is a fine of $2500, five months in jail, or both, be tried without a jury, consistent with the Due Process Clause of the Fourteenth Amendment, where the record establishes that there is a substantial likelihood that the accused could not obtain a fair trial before a judge alone because of the history of litigation involving the accused, the bar, and the judges of the state, and the long-standing personal animosity between them?

---

*There are no parties to this appeal other than those listed in the caption. The Southern Legal Counsel, Inc. appeared as an *amicus curiae* in the Supreme Court of Florida.

CONTENTS

	Page
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION OF THIS COURT	2
CONSTITUTIONAL PROVISIONS AND RULES INVOLVED	3
STATEMENT OF THE CASE	3
A. *Enforcement of Unauthorized Practice Rules in Florida*	3
B. *Prior Proceedings Against Appellant*	4
C. *Proceedings Before the Referee*	6
D. *Proceedings in the Supreme Court of Florida*	9
THE QUESTIONS PRESENTED ARE SUBSTANTIAL.	11
I. WHERE THE MAXIMUM AUTHORIZED PENALTY IS A FINE OF $2500, FIVE MONTHS IN JAIL, OR BOTH, THE OFFENSE IS A SERIOUS ONE REQUIRING A TRIAL BY JURY	12
II. UNDER THE FACTS OF THIS CASE, DUE PROCESS REQUIRED THE FLORIDA SUPREME COURT TO GRANT APPELLANT A TRIAL BY JURY	15
CONCLUSION	18
APPENDIX A — Opinion of the Supreme Court of Florida, April 26, 1984	1a
APPENDIX B — Order of the Supreme Court of Florida Denying in Part and Granting in Part Motion for Rehearing, July 11, 1984	19a
APPENDIX C — Referee's Recommended Findings of Fact, Judgment, and Sentence, October 10, 1983	21a

APPENDIX D Notice of Appeal to the Supreme Court of the United States, filed July 23, 1984 ..... 51a
APPENDIX E Integration Rule, Article XVI, III, B 54a
APPENDIX F Summary of State Court Rulings 58a

TABLE OF AUTHORITIES

Cases: **Page:**

Aaron v. State,
284 So.2d 673 (Fla. 1973) 10
Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm'n,
430 U.S. 442 (1977) 12
Baldwin v. New York,
399 U.S. 66 (1970) 11, 12, 14
Boddie v. Connecticut,
401 U.S. 371 (1971) 6
Douglass v. First National Realty Corp.,
543 F.2d 894 (D.C. Cir. 1976) 13
Duncan v. Louisiana,
391 U.S. 145 (1968) 11, 12
Dunn v. The Florida Bar, et al.,
83-243-Civ-J-12
(M.D. Fla., filed March 16, 1983) 6
The Florida Bar v. Brumbaugh,
355 So.2d 1186 (Fla. 1978) 5
The Florida Bar v. Furman,
376 So.2d 378 (Fla. 1979),
appeal dismissed, 444 U.S. 1061 (1980) 5, 6
Frank v. United States,
395 U.S. 147 (1969) 13, 14
Gibson v. Berryhill,
411 U.S. 564 (1973) 16
Girard v. Goins,
575 F.2d 160 (8th Cir. 1978) 13
In re Murchison,
349 U.S. 133 (1955) 16
Johnson v. Avery,
393 U.S. 483 (1969) 6
Marshall v. Jerrico, Inc.,
446 U.S. 238 (1980) 16

Cases, contd: **Page:**

Mayberry v. Pennsylvania,
400 U.S. 455 (1971) 16
Muniz v. Hoffman,
422 U.S. 454 (1975) 12, 14
Richmond Black Police Officers' Ass'n v. City of Richmond,
548 F.2d 123 (4th Cir. 1977) 13
Taylor v. Hayes,
418 U.S. 488 (1974) 10, 13, 15
Tumey v. Ohio,
273 U.S. 510 (1927) 16
Ungar v. Sarafite,
376 U.S. 575 (1964) 15
United States v. Craner,
652 F.2d 23 (9th Cir. 1981) 15
United States v. Gedraitis,
690 F.2d 351 (3d Cir. 1982) 13
United States v. Hamdan,
552 F.2d 276 (9th Cir. 1977) 13
United States v. McAlister,
630 F.2d 772 (10th Cir. 1980) 13
United States v. PATCO,
678 F.2d 1 (1st Cir. 1982) 13
United States v. Stewart,
568 F.2d 501 (6th Cir. 1978) 13
United States v. Thomas,
574 F. Supp. 197 (D.D.C. 1983) 15
Ward v. Village of Monroeville,
409 U.S. 57 (1972) 15
Williams v. Florida,
399 U.S. 78 (1970) 12
Withrow v. Larkin,
421 U.S. 35 (1975) 7, 16

Page:

Constitution, Statutes, Rules

United States Constitution
Due Process Clause 6
Equal Protection Clause 6
Sixth Amendment . . . . . 3, *passim*
Fourteenth Amendment . . . . . 3, *passim*
18 U.S.C. § 1(3) 13
28 U.S.C. § 1257(2) 2
28 U.S.C. § 1257(3) 2
28 U.S.C. § 2103 3
28 U.S.C. § 2403(b) 2
42 U.S.C. § 1983 6
Rules of the Supreme Court of the United States
Rule 28.4(c) 2
Florida Statutes
Section 454.23 . . . . . 4, 14
Section 775.082 . . . . . 4, 14
Section 775.083 . . . . . 4, 14
Florida Integration Rule, Article XVI . . . . . *passim*

Other Authorities:

Wright, Miller, Cooper & Gressman,
Federal Practice and Procedure § 4016 (1977) 3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ROSEMARY FURMAN
d/b/a Northside Secretarial Service,

Appellant

v.

THE FLORIDA BAR,

Appellee.

On Appeal from the Supreme Court of Florida

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Supreme Court of Florida dated April 26, 1984, is set forth in Appendix A (1a-18a) and is not officially reported. The order of the Supreme Court of Florida on the motion for rehearing and the motion for stay of the mandate is set forth in Appendix B (19a-20a) and is not officially reported. The Referee's recommended findings of fact, judgment, and sentence dated October 10, 1983, is set forth in Appendix C at pages 21a-50a, and also is not officially reported.

JURISDICTION OF THIS COURT

This is an appeal from a final order entered July 11, 1984, imposing a term of 120 days in prison, 90 of which are suspended, based on a finding that appellant violated a prior order of the Supreme Court of Florida enjoining her from engaging in the unauthorized practice of law, and that by doing so she was in indirect criminal contempt of court. The rules under which she was tried provide that the Supreme Court of Florida shall appoint a Referee who hears the evidence and recommends findings and a sentence to the Supreme Court (App. 56a). Appellant contends that because, under Paragraph 2 of those rules, she could have been sentenced to a fine of $2500, five months in jail, or both (App. 57a), she had a constitutional right under the Sixth Amendment to the Constitution to a trial by jury.

The opinion of the Supreme Court denying her a trial by jury and imposing the jail term on her was entered on April 26, 1984. A timely motion for rehearing was filed on May 10, 1984, and on July 11, 1984, the motion was denied in part and granted in part, and the decision of the Supreme Court of Florida became final at that time (App. 19a). A notice of appeal was filed in the Supreme Court of Florida on July 23, 1984 (57a). Because 28 U.S.C. § 2403(b) may be applicable to this appeal, a copy of the notice of appeal was served on the Attorney General of Florida. *See* Rule 28.4(c) of the Rules of this Court. Jurisdiction in this Court is based on 28 U.S.C. § 1257(2).

The second question presented also challenges the denial of appellant's demand for a trial by jury, but is based on the Due Process Clause of the Fourteenth Amendment rather than the Sixth Amendment. On that question appellant does not challenge the validity of any rule of the Supreme Court of Florida, and hence jurisdiction in this Court for that question alone would ordinarily be only by writ of certiorari under 28 U.S.C. § 1257(3). However, because this Court has appellate jurisdiction under 28 U.S.C. § 1257(2) with respect to the first

question, it has appellate jurisdiction over the second question as well. *See* 16 Wright, Miller, Cooper & Gressman, *Federal Practice and Procedure* § 4016 (1977) and cases cited therein.

If the Court determines that an appeal is not proper in this case, it is requested that the papers be regarded and acted on as a petition for a writ of certiorari pursuant to 28 U.S.C. § 2103.

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...

Section I of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> nor shall any State deprive any person of life, liberty, or property, without due process of law ...

The pertinent provisions of the Florida Integration Rule, Article XVI, III, B, are set forth in Appendix E (54a-57a).

STATEMENT OF THE CASE

A. Enforcement of Unauthorized Practice Rules in Florida

In Florida, as in most states, the state's highest court has created an integrated bar to which all attorneys must belong in order to practice. The rules creating the governing of the appellee, The Florida Bar, are found in the rules of the Florida Supreme Court in the section entitled "Integration Rule."

Article XVI of the Integration Rule contains the provisions regarding enforcement of unauthorized practice of law restrictions, under which the Florida Supreme Court has

assigned appellee the responsibility to investigate and prosecute charges of unauthorized practice. Thus, in each case the Bar files a petition with the Supreme Court, and that Court approves the petition in the form of a rule to show cause. The Court then appoints a Referee, normally an active or retired trial judge in the area in which the respondent resides, to try the case and to make recommended findings to the Court and, if appropriate, to recommend a sentence also. While the Court has the power to overturn findings made by the Referee, it rarely does so because its review is "based upon the law." (Subparagraph k, App. 51a).

When confronted with a case of apparent unauthorized practice, appellee generally proceeds in one of two ways. It may seek an injunction, which is the ordinary way of proceeding, or it may bring charges of indirect criminal contempt. If it chooses the latter course, the Integration Rule provides that the Supreme Court of Florida may punish a person found guilty "by fine, not to exceed $2500, imprisonment of up to five months, or both" (Paragraph 2, App. 57a), and if appropriate, issue an injunction as well. The only significant procedural difference between a civil injunctive action and one for indirect criminal contempt is that in the latter case guilt must be established beyond a reasonable doubt. But in neither case is there any right to trial by jury.

There is one additional option which is rarely employed. Engaging in the practice of law without a license is also a first class misdemeanor under § 454.23, Fla. Stat. (1979), for which the penalty is imprisonment for up to a year and a fine of $1000. §§ 775.082 and 775.083, Fla. Stat. (1979). But a prosecution under that section would not be handled by appellee, but by the local, elected State Attorney.

B. Prior Proceedings Against Appellant

In early 1977, appellee filed a petition with the Supreme Court of Florida requesting that appellant be enjoined from engaging in the unauthorized practice of law. The Court approved that petition and issued a rule to show cause, alleging that appellant gave legal advice and performed legal services

in connection with her secretarial business. Specifically, the allegations centered around appellant's practice in the domestic relations area where she prepared the necessary papers for individuals who sought to exercise their right to represent themselves in the Florida courts in divorce, name change, and adoption matters.

The facts regarding appellant's activities have never been in dispute. She runs a secretarial service where individuals deal directly with her. She gathers the relevant information through intake forms, types the required pleadings for her customers, and provides them with instructions on how to file and how to proceed to final judgment. Her standard charge for a complete set of divorce papers is $50, although she reduces that fee or waives it entirely in some cases.

At no time has she tried to hide her activities, which she regularly advertises in newspapers and carries on in the open for anyone, including Bar representatives and local judges, to observe. The pleadings that she types are readily identified as hers since, in most instances, her name appears on them as the notary. She has never held herself out to be an attorney, and no one has ever been led to believe that she is one. Furthermore, no client of hers has ever complained to the Bar or any court about her services.

Because the Florida Supreme Court decides what constitutes the practice of law, civil injunctive proceedings are often used by the Court to define the boundaries of what lay persons can do and to announce what activities may only be undertaken by lawyers. Thus, while appellant's first case was being prepared for trial, the Supreme Court of Florida issued its decision in *The Florida Bar v. Brumbaugh,* 355 So.2d 1186 (Fla. 1978), which somewhat relaxed the prior restrictions on unauthorized practice, but still prohibited any oral communications between legal secretaries, such as appellant, and the persons that they were assisting. Thus, in her first case, one of appellant's principal claims was that the remaining restrictions imposed were unwise and unworkable, a plea that the Florida Court rejected. *The Florida Bar v. Furman,* 376 So.2d 378 (Fla. 1979) ("Furman I").

In that proceeding she also argued that if the restrictions on oral communications were maintained, her conduct was constitutionally protected insofar as she was providing services to indigents who were otherwise being denied access to the courts. Relying principally on *Boddie v. Connecticut,* 401 U.S. 371 (1971), and *Johnson v. Avery,* 393 U.S. 483 (1969), she contended that so long as the poverty barrier existed for those seeking to exercise fundamental rights over which the state maintained a monopoly (such as divorce, name change, and adoption), the Due Process and Equal Protection Clauses of the Constitution forbid the use of unauthorized practice rules to prevent those individuals from exercising their rights when no affordable legal services are available. The Florida Supreme Court also rejected that argument without discussion, and this Court dismissed appellant's appeal on that issue for want of a substantial federal question. 444 U.S. 1061 (1980).[1]

C. Proceedings Before the Referee

On September 27, 1982, based on an investigation pending for over two years, appellee filed a petition with the Supreme Court of Florida requesting that it issue a rule to show cause why appellant should not be held in indirect criminal contempt for six alleged violations of the Court's 1979 order. On November 30, 1982, the Florida Supreme Court issued its rule to show cause, designating Circuit Judge A.C. Soud, Jr. to find facts and make recommendations on the charges. While the case was in pretrial, appellee filed a second petition, which alleged ten additional violations. The Court promptly

---

[1] The constitutional claim presented in *Furman I* was not raised in this case. However, a similar claim is being made in a class action against the Bar and the Supreme Court of Florida, brought under 42 U.S.C. § 1983 by an individual whom Ms. Furman declined to serve because to do so would have violated the injunction in *Furman I* and the rules enunciated in *Brumbaugh. Dunn v. The Florida Bar, et al.,* 83-243-Civ-J-12 (M.D. Fla., filed March 16, 1983). On January 5, 1984, the district court denied a motion to dismiss, and a motion to certify the class is now pending before the district court.

approved a second rule to show cause, and the two cases were consolidated. In her answer to both rules, appellee demanded trial by jury.

In her answers, her pretrial motion for a jury trial, and her brief and oral argument in the Florida Supreme Court, appellant sought a jury trial on two separate but related grounds: the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment. For her Sixth Amendment claim, she argued that the charges against her were "serious" ones which triggered the right to trial by jury for a number of reasons, pointing first to the punishment specified in the Integration Rule of a fine of $2500, five months' imprisonment, or both. She also pointed out that the Court issued two separate rules to show cause, with 16 separate alleged violations, for any one of which she could be given the maximum punishment, so that potentially she could be jailed for more than six and a half years.

Recognizing that this Court had set six months on any single charge as the dividing line on the jury trial question, she argued that the combination of five months' imprisonment plus the fine was sufficient to constitute a serious charge requiring the protection of a jury trial. In addition, relying on an unbroken string of decisions from five U.S. Circuit Courts of Appeals holding that fines of between $500 and $2500 are sufficient to entitle an accused to a jury trial, she argued that the $2500 fine alone was sufficient to allow her to have her case heard before a jury of her peers.

Appellant's due process argument, while strengthened considerably by the serious penalties to which she is subject, was based principally on the facts of this case. In particular, citing *Withrow v. Larkin,* 421 U.S. 35, 58 (1975), she argued that because of her acrimonious relationship with the Bar, the local judiciary, and the Justices of the Supreme Court of Florida, the "risk of unfairness is intolerably high" if she were to be tried before a Referee rather than a lay jury. To support that claim, she relied principally on the following facts:

—The charges against her go to the very heart of the Bar's monopoly: the right to exclude others from what is defined by the Supreme Court of Florida as the practice of law.

—She was charged by the Supreme Court of Florida with having violated its prior order, in which, in its original decision, the Florida Court had asked the Bar for a recommended punishment, even though the relief sought in its rule to show cause was purely injunctive.

—She played a substantial role in the filing of a federal civil rights charge against the Bar and the Florida Supreme Court (note 1, *supra),* alleging that their activities in enforcing unauthorized practice restrictions deprived individuals who could not afford legal counsel of their constitutional right of access to the courts.

—She has regularly criticized both the Bar and the judges of the Florida courts in the media and other forums for their failure to take steps to insure that the legal needs of the public were met.

—The complaints against her were filed, not by disgruntled clients, but by judges sitting in the same court as the Referee (and a few by lawyers who practice before those judges), and a number of the judges had publicly expressed personal interest in the outcome of the proceeding against appellant.

—The factual findings of the Referee are examined by the Supreme Court of Florida only under a very deferential standard of review.

In a brief order entered shortly before trial was to begin, the Supreme Court of Florida rejected appellant's request for a jury trial. During the ensuing trial before the Referee, appellee offered evidence on 12 of the 16 charges, principally from individuals whom appellant had served, none of whom had complained to the Bar or the courts about her work. In light of the denial of her request for a jury trial, she decided not to testify at that time.

On October 10, 1983, the Referee announced his findings and recommendation in open court, reading extensively from

his written report. He found appellant guilty on every count on which appellee offered evidence and found that she had done a number of other improper acts, for which she was not charged, but which he found were committed during the course of rendering legal assistance. In that regard, despite cross-examination and documentary evidence directly contradicting the most damaging witnesses, the Referee found every single fact in favor of the Bar and believed every statement made by every one of its witnesses. In addition, he made two findings that even appellee had not requested, and as to which appellant had not been heard: that she was motivated by monetary gain to undertake these activities (App. 46a) and that she had violated the Court's 1979 order willfully and maliciously (App. 30a, 33a, 46a).

Under subparagraph j of the Integration Rule (App. 56a), an accused is entitled to present evidence in mitigation after the finding of guilty has been made. At the request of counsel, the Referee recessed the proceeding to allow her to confer with counsel after the Referee had announced his findings. During the recess, counsel examined the Referee's report and noted that he had already issued detailed written findings regarding mitigation and aggravation, even though appellant had not yet been given an opportunity to present her case on those issues. Indeed, the Referee had already decided that only jail would be an appropriate punishment, and merely left blank the number of months for which she was to be incarcerated. Appellant concluded that it would be futile for her to testify about her motives and good faith, and thus after brief presentations of counsel, the Referee inserted "four" in the blank space for the recommended number of months to be spent in the state prison for the violation of each rule to show cause and added that the sentences were to be served concurrently.

D. Proceedings in the Supreme Court of Florida

The case was then briefed and argued in the Supreme Court of Florida, which reaffirmed the denial of a jury trial, upheld the Referee's factual findings and conclusions of law, and re-

jected appellant's other challenges, including her request for resentencing based on the Referee's prejudgment on the question of mitigation and the appropriate punishment. For its sentence the Court agreed that jail time should be imposed, but ordered appellant to serve 120 days, 90 of it suspended, provided that she did not violate the Court's 1979 order, in the Duval County Jail rather than in the state penitentiary (App. 14a). It also imposed costs of $7,802.14 against her.

As to her jury trial claim, the Court looked to the actual punishment imposed, rather than the maximum possible punishment, in finding no Sixth Amendment violation. It relied principally on one of its own cases, *Aaron v. State,* 284 So.2d 673 (Fla. 1973), and this Court's decision in *Taylor v. Hayes,* 418 U.S. 488, 496 (1974) (App. 4a-5a), which, although a contempt case, did not involve a situation in which there was a specific maximum punishment prescribed by rule. As to the claim based on the amount of the fine that could be imposed, it simply noted that no fine was levied and did not discuss any of what it referred to as a "cornucopia" of federal circuit court decisions cited by appellee dealing with the issue (App. 4a).

As to appellant's due process claim to a trial by jury, to which she had devoted nearly ten pages in her brief, citing nine decisions of this Court, two circuit court decisions, and one state supreme court decision, the Florida Supreme Court rejected it in barely half a page, citing only a single Florida case dealing with disqualification based on pecuniary interest (App. 6a), a claim appellant never made. The Court's only other response was also to an argument that she did not make—"that the state cannot use its legal system to regulate the practice of law or prohibit the unauthorized practice of law." *Id.* Most important of all, the Court overlooked her argument, based on the specific facts in this case, that appellant could not obtain a fair trial before judges in Florida because of her longstanding, adversarial relation with them and the Bar.

Appellant filed timely motions for rehearing and for a stay of the mandate on May 10, 1984, reiterating the unconstitu-

tionality of denying her a jury trial. The principal focus of her rehearing motion was directed at the $7,802.14 in costs imposed against her, which was based entirely on a one-page letter sent by appellee to the Court, apparently at the request of the clerk, two days before the Court's decision was issued. The motion raised a number of legal and factual arguments, which prompted a detailed response and supplemental submission by appellee, a reply from appellant, and a further reply from appellee, accepting appellant's suggestion that the question of costs be referred to the Referee.

On July 11, 1984, the Court entered its order denying rehearing, except that it deleted the reference to costs and referred that question back to the Referee for his report and recommendation (App. 19a). Although the Bar had stated that it did not object to an order staying the mandate to allow appellant to seek review in this Court, provided that she abided by the Court's 1979 injunction, the Supreme Court granted her only 30 days in which to obtain a further stay from this Court. This appeal followed.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

In *Duncan v. Louisiana,* 391 U.S. 145, 156 (1968), in which the guarantees of trial by jury embodied in the Sixth Amendment were held applicable to the states, this Court explained the vital importance of a jury trial:

> Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. . . . the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges.

Two years later in *Baldwin v. New York,* 399 U.S. 66, 72 (1970), in which this Court ruled that any crime for which in-

carceration of more than six months was authorized required a trial by jury, it noted that "the jury interposes between the accused and his accuser the judgment of laymen who are less tutored perhaps than are judges or a panel of judges, but who at the same time are less likely to function or appear as but another arm of the Government that has proceeded against him." And in *Williams v. Florida,* 399 U.S. 78, 100 (1970), it observed that "the essential feature of the jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the common participation and shared responsibility that results from that group's determination of guilt or innocence." The question presented on this appeal is whether, in light of those vital purposes, the Florida Supreme Court properly rejected appellant's claim that she was entitled to a trial by jury under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment.

I. WHERE THE MAXIMUM AUTHORIZED PENALTY IS A FINE OF $2500, FIVE MONTHS IN JAIL, OR BOTH, THE OFFENSE IS A SERIOUS ONE REQUIRING A TRIAL BY JURY.

In its decision in *Duncan,* this Court recognized that even though the Sixth Amendment applies to the states and speaks in absolute terms, the law has long recognized an exception from the jury trial requirement for petty offenses. In *Baldwin,* this Court established the threshhold for "serious" crimes at six months' incarceration, but did not address the question of what fine is sufficiently large to require a jury also. Since then, this Court has considered that question only once, in *Muniz v. Hoffman,* 422 U.S. 454, 479 (1975), and concluded only that a jury was not mandated where a fine of $10,000 was imposed on a labor union having 13,000 members. *Cf. Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm'n,* 430 U.S. 442, 460 n. 15 (1977) (noting *Muniz* in the context of a claim of a right to jury trial for civil penalties imposed by an agency).

Since then, eight United States Courts of Appeals have considered the issue of what level of fine constitutes a serious offense, and none of them has upheld a non-jury trial with a fine of $2500 or more. Four courts have held that a fine in excess of $500 gave the accused a right to trial by jury.[2] In reaching that result, they relied on 18 U.S.C. § 1(3), the federal statute defining as a petty offense any misdemeanor for which the maximum punishment does not exceed six months incarceration and a fine of $500. Two other courts, declining to draw a firm line, held that fines of $2500 and $5000, respectively, require a jury trial,[3] and two other circuits have indicated in *dicta* that they would adhere to the six-month, $500 line.[4]

The Supreme Court of Florida made no effort to distinguish or criticize these rulings because it found that no fine had been recommended by the Referee or would be imposed by the Court. Instead, relying on *Taylor v. Hayes,* 418 U.S. 488 (1974), it looked to the actual punishment imposed and not to that authorized (App. 5a). That was plain error. As this Court observed in *Frank v. United States,* 395 U.S. 147, 148 (1969), the "most relevant indication of the seriousness of an offense is the severity of the penalty authorized for its commission." And, as if any emphasis were necessary, the Court added: "If the statute creating the offense specifies a maximum penalty, then of course that penalty is the relevant criterion." *Id.* at 149, n.2. Since the Integration Rule permits a fine of $2500, appellant's Sixth Amendment claim should have been measured against that amount, rather than against the sentence actually imposed.[5]

---

[2]*Douglass v. First National Realty Corp.,* 543 F.2d 894, 902 (D.C. Cir. 1976); *Richmond Black Police Officers' Ass'n v. City of Richmond,* 548 F.2d 123, 128 (4th Cir. 1977); *United States v. Hamdan,* 552 F.2d 276, 280 (9th Cir. 1977); *United States v. McAlister,* 630 F.2d 772, 774 (10th Cir. 1980).

[3]*Girard v. Goins,* 575 F.2d 160, 165 (8th Cir. 1978), and *United States v. PATCO,* 678 F.2d 1, 5 (1st Cir. 1982).

[4]*United States v. Stewart,* 568 F.2d 501, 504 (6th Cir. 1978), and *United States v. Gedraitis,* 690 F.2d 351, 355 (3d Cir. 1982).

[5]For a summary of the varied results and rationales in the state courts, see Appendix F (58a-59a).

Moreover, the court below made no effort to determine if the charge was "serious," quite apart from the specific maximum allowable penalty, as this Court has made clear is necessary in decisions such as *Baldwin* and *Frank, supra.* If it had, any objective examination of the facts makes it plain that the charges are serious ones requiring the protection of a trial by jury.

First, appellee chose to proceed by criminal prosecution rather than civil proceedings. It filed two petitions with the Court, and the Court issued two separate rules to show cause, alleging 16 separate violations, any one of which could produce the maximum allowable sentence. The Referee who heard the case obviously viewed the violations as serious, as did the Florida Supreme Court in its *per curiam* and two concurring opinions.

Second, in terms of the community standards to which this Court often has looked, the conclusion of the Florida Court that the crime is not sufficiently serious to warrant a jury trial should be given no particular credence. The judgment as to the appropriate punishment was not made by a democratically elected legislature, but by appointed judges who decided for themselves how "serious" they considered violations of their own unauthorized practice rules to be. In fact, the specific punishments for engaging in the unauthorized practice of law were first added to the Integration Rule, at the urging of the Bar, on July 9, 1975, 326 So.2d 7, 11, two weeks after this Court in *Muniz, supra,* declined to require a jury for a $10,000 fine imposed on a labor union. This at least raises the possibility that the penalty chosen was intended to come as close to the line as possible without affording the accused a jury trial.

Moreover, the Florida legislature has also spoken on the topic and concluded in Section 454.23 of the Florida Statutes that violations of unauthorized practice of law restrictions are misdemeanors of the first degree, for which the punishment under Florida Statutes 775.082 and 775.083 is up to one year in prison and a fine of $1000. Had the appellee chosen to refer

these charges to the elected State Attorney, and had he in turn decided to file charges against her, there is no question that she would have been entitled to a jury. Not only does this suggest that the Florida legislature views the crime as a serious one, but it also suggests that the choice to proceed under the Integration Rule improperly operates to deny appellant and others similarly situated the right to be tried by a jury of their peers.[6]

For these reasons, appellant was improperly denied a trial by jury in violation of the Sixth Amendment. At the very least, there is a substantial question raised by this denial, particularly in light of the contrary rulings of every federal circuit that has considered the question.

II. UNDER THE FACTS OF THIS CASE, DUE PROCESS REQUIRED THE FLORIDA SUPREME COURT TO GRANT APPELLANT A TRIAL BY JURY.

Even if a jury is not required under the Sixth Amendment, this Court must still determine whether appellant's conviction meets the standard of due process, which includes an assessment of whether there was "such a likelihood of bias or an appearance of bias that the [Referee] was 'unable to hold the balance between vindicating the interests of the court and the interests of the accused.'" *Taylor v. Hayes, supra,* 418 U.S. at 501, *quoting Ungar v. Sarafite,* 376 U.S. 575, 588 (1964). This Court has relied upon that principle to invalidate a number of decisions, in a variety of contexts: *Ward v. Village*

[6]Appellant also relied on the collateral consequences of a possible conviction as a basis for her right to trial by jury. *See United States v. Craner,* 652 F.2d 23 (9th Cir. 1981); *United States v. Thomas,* 574 F. Supp. 197 (D.D.C. 1983). In particular, she pointed out that a finding of guilty would certainly cause her to go out of business, especially because appellee was continuing its investigation of her and had demonstrated its desire to do everything possible to prevent her from preparing papers for those who cannot afford a lawyer. The Florida Supreme Court dismissed this claim on the ground that the consequences would occur only if she were guilty of an activity in which she had no right to engage (App. 6a), which obviously begs the question of whether she was entitled to have a jury or a judge determine her guilt or innocence.

of Monroeville, 409 U.S. 57 (1972); *Tumey v. Ohio,* 273 U.S. 510 (1927); *Gibson v. Berryhill,* 411 U.S. 564, 578-79 (1973); and *Mayberry v. Pennsylvania,* 400 U.S. 455, 465 (1971). And it has described the appropriate circumstances for its use in a variety of different ways: *Withrow v. Larkin,* 421 U.S. 35, 58 (1975) (the "risk of unfairness is intolerably high"); *In re Murchison,* 349 U.S. 133, 136 (1955) ("no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome"); and *Marshall v. Jerrico, Inc.,* 446 U.S. 238, 250 (1980) (the possibility that the decisionmaker's judgment will be "distorted by the prospect of institutional gain"). In each instance, the outcome of the case turns on the facts, and here the facts compel the conclusion that due process was violated by denying appellant a trial by jury.

The overarching fact is that appellant could not get a fair trial because of the longstanding adversary relation between herself on the one hand and the Florida Bar, the local judges in Duval County, and the Justices of the Florida Supreme Court on the other. This Court need not decide whether due process can ever be satisfied when a non-lawyer can be sent to jail for five months and be fined $2500 for violating rules defining the extent of the Bar's monopoly, when lawyers serve as the accusers, and former lawyers, who have become judges and who may some day become practicing lawyers again, serve as the deciders of all questions of law and fact. There is much more in this case that demonstrates that the risk of bias is so intolerably high that it demands a jury as a buffer between appellant and her accusers.

What distinguishes appellant's case from others is her vocal criticism of the bench and Bar in Florida because of their failure to ensure that the people of Florida have adequate access to the courts. Appellee never disputed that this antagonism exists, nor that the situation was probably exacerbated by her role in the filing of a federal civil rights class action against the Bar and the Florida Supreme Court by an individual whom she is forbidden from serving by the very rules she is alleged to have violated, in which it is alleged that the

unauthorized practice prohibitions violated the plaintiff's constitutional right to due process and equal protection. *See* note 1, *supra.* Furthermore, in the prior injunctive proceeding against appellant, the Supreme Court was so anxious to punish her that its original order asked the Bar to recommend an appropriate sentence, but that request had to be deleted when the Court was advised that the Bar's petition and the Court's own rule to show cause asked only for injunctive relief.

Equally tainted are the trial judges of Duval County. It was they and members of the Bar, not appellant's clients, who filed every one of the charges against her, and it is they who continued to express particular interest in the outcome of the matter to the chairman of the local unauthorized practice of law committee. In fact, one of appellant's chief adversaries on the local judiciary, Judge Lawrence Fay, actually sat in at the status conference in the chambers of his colleague Judge Soud, who had been hand-picked by the Florida Supreme Court to try this case.

The signal which Judge Fay and others intended to communicate was obviously heard by the Referee. Not only did he accept every claim made by appellee, but he made two additional findings—that appellant was providing her services, at a maximum of $50, for pecuniary gain, and that she violated the Florida Supreme Court's prior ruling willfully and maliciously—that not even appellee had requested.

Most important of all, and most indicative of the impossibility of appellant obtaining a fair trial without a jury, is the manner in which the Referee conducted the sentencing proceeding. The Referee's finding of guilt and his reasons for making that finding left little doubt as to his views on the need for significant punishment, but he committed himself far beyond that prior to the scheduled sentencing hearing. Thus, before allowing appellant to be heard in mitigation, the Referee had typed in final form and handed out to the parties and press his conclusions as to the nature of the punishment required, leaving only a blank for the number of months to be served in jail. That conduct serves to underscore what ap-

pellant has contended all along: that she could not have a fair trial except before a jury of her peers.

For these reasons, the question of whether due process required the Supreme Court of Florida to give appellant a trial by jury is also a substantial one and requires plenary consideration by this Court.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted, and this Court should decide whether the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment require that appellant be tried by a jury in this case.

Respectfully submitted,

ALAN B. MORRISON
(Counsel of Record)
JOHN CARY SIMS
Public Citizen Litigation Group
Suite 700 2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704
WILLIAM J. SHEPPARD
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661
ATTORNEYS FOR APPELLANT

August 6, 1984

APPENDIX A

SUPREME COURT OF FLORIDA

No. 63,380
No. 62,676

THE FLORIDA BAR,

Petitioner,

vs.

ROSEMARY W. FURMAN,
d/b/a NORTHSIDE SECRETARIAL SERVICE,

Respondent.

April 26, 1984

PER CURIAM.

The Florida Bar filed petitions charging Rosemary W. Furman, d/b/a Northside Secretarial Service, with engaging in the unauthorized practice of law in the State of Florida, in contempt of this Court's order of November 1, 1979, as reported in *The Florida Bar v. Furman,* 376 So.2d 378 (Fla. 1979), *appeal dismissed,* 444 U.S. 1061 (1980). The charges were assigned to a referee and a report returned for our consideration. We have jurisdiction under article V, section 15 of the Florida Constitution and The Florida Bar Integration Rule, article XVI.

A brief recitation of the prior history of this case is necessary. Respondent Furman is not and never has been a member of The Florida Bar (Bar) and is not licensed to practice law within this state. In 1977, the Bar filed petitions with this Court alleging that respondent had engaged in the

unauthorized practice of law by giving legal advice and by rendering legal services in connection with marriage dissolutions and adoptions in the years 1976 and 1977. More specifically, the Bar alleged that respondent performed legal services by soliciting information from customers and by preparing legal pleadings for them in violation of Florida law and that, through advertising, respondent held herself out to the public as having legal expertise in Florida family law. We appointed a referee to receive evidence and to make findings of fact, conclusions of law, and recommendations as to the disposition of the case. In due course the referee submitted findings that respondent had engaged in the unauthorized practice of law and recommended that she be adjudged guilty of contempt of this Court. We found respondent guilty and permanently enjoined and restrained her from further engaging in the unauthorized practice of law, as specified, but did not find her guilty of contempt.

On September 28, 1982, and March 9, 1983, the Bar filed petitions alleging six and ten instances, respectively, wherein respondent had continued her unauthorized practice of law in contempt of this Court's order. We issued rules to show cause on November 30, 1982, and March 21, 1983, respectively, and appointed a referee to receive evidence and to make findings of fact, conclusions of law, and recommendations. The referee conducted pretrial hearings, consolidated the rules, and set evidentiary hearings for June 20 and 21, 1983. On June 20, 1983, we denied respondent's motions for a stay of the proceedings and for trial by jury. Respondent chose not to testify at the evidentiary hearings. The uncontradicted testimony of former customers of respondent was that she advised them to falsify information in marriage dissolution papers and to conceal relevant information from the courts acting on the dissolution petitions. Her purported reasons were various: it's none of their damn business, they don't pay any attention to the information, or you'll (either) get less or give more money in the dissolution judgment. In one instance, respondent advised a wife who had been married, divorced, and remarried to the same husband but could not

remember the date of the remarriage to insert the date of the dissolved first marriage as the date of the second marriage in the petition for dissolution. Another couple who disagreed on whether their stipulation on child custody provided for $35 per week or $35 per child was advised that it didn't matter because the judge awarded whatever he wanted to anyway. In a particularly egregious instance, respondent assisted a husband seeking a marriage dissolution in preparing a stipulation in which he agreed to child custody by the wife. While the dissolution petition and child custody stipulation were pending before the court, the husband became aware that the wife was abusing the children, took actual custody of the children, and consulted respondent about withdrawing his stipulated agreement on child custody. Respondent advised him not to do so because this would require "starting over" on the dissolution petition and he should let the social agency (HRS) handle the child abuse and custody problems.

At the conclusion of the evidentiary hearings, the referee scheduled briefing and the case was orally argued on August 15, 1983. Both parties were given an opportunity thereafter to submit proposed orders for the referee's consideration. On September 28, 1983, the referee set a hearing for October 10, 1983, to announce his findings and recommendations and to hear arguments in aggravation or mitigation, if appropriate. At the beginning of the hearing, the referee distributed draft copies of his prospective order and announced the highlights of the order from the bench. The draft recommended that respondent be held in indirect criminal contempt and that she be sentenced to unspecified terms of imprisonment. The referee then offered respondent an opportunity to present evidence and argument in mitigation and recessed the hearing for a short time to permit respondent to consider her options. Respondent chose not to testify or present evidence, but joined the Bar in presenting arguments, after which the referee entered the order under consideration. The order recommended concurrent four-month sentences in state prison.

Respondent raises five objections to the referee's report.

She initially argues that she was entitled to a jury trial under both the sixth amendment and the due process clause of the fourteenth amendment, United States Constitution. This argument fails for the following reasons. These original proceedings were conducted under The Florida Bar Integration Rule, article XVI, which provides that the punishment for indirect criminal contempt shall not exceed a fine of $2,500 or imprisonment of up to five months or both. On sixth amendment grounds, respondent urges that she was potentially subject to five months' imprisonment and a fine of $2,500 for (a) each of the sixteen alleged instances of unauthorized practice of law, or for (b) each of the two rules, charging indirect criminal contempt. It is respondent's position that these potential punishments were so severe that they entitled her to a jury trial. In addition, respondent urges that the potential punishment of imprisonment and a fine of $2,500 for even a single conviction was sufficiently severe to entitle her to a jury trial. Further, she also argues that any potential fine above $500 entitled her to a jury trial. In support of her position, respondent cites a cornucopia of federal case law which she asserts supports her position. We disagree. First, as to whether it is the potential or actual punishment that determines the seriousness of the offense and the right to a jury trial, the United States Supreme Court has held that "our cases hold that petty contempt like other petty criminal offenses may be tried without a jury and that contempt of court is a petty offense when the penalty *actually imposed* does not exceed six months or a longer penalty has not been expressly authorized by statute." *Taylor v. Hayes,* 418 U.S. 488, 495 (1974) (emphasis supplied) (citations omitted). Respondent asserts that a longer penalty is expressly authorized by the Integration Rule, article XVI, and that she is thereby entitled to a jury trial. Respondent overlooks *Aaron v. State,* 284 So.2d 673 (Fla. 1973). In Aaron, we recognized that Florida law theretofore had permitted the judge to be trier of both the law and facts and to impose punishments of greater than six months for criminal contempt. In order to reconcile Florida

law with United States constitutional law, we held that all provisions of Florida law authorizing the judge to be the trier of both law and facts were limited to situations in which the judge contemplated, if a finding of guilt be made, the imposition of a sentence of six months or less and, further, that when a court denied a pretrial motion for trial by jury it could not thereafter impose a sentence greater than six months. *Id.* at 676-77. Our constitutional holding in *Aaron* reduces all criminal contempt offenses to petty offenses when the judge acts as trier of fact and law, barring waiver of the right to jury trial by the respondent, and reduces or restricts the punishment for criminal contempt, potential or actual, to that which may be imposed for petty criminal offenses. The *Aaron* holding is consistent with *Taylor,* 418 U.S. at 496, where the Court upheld the power of a state appellate court to obviate the right to a trial by jury by reducing a contemnor's sentence to six months or less rather than retrying the contempt with a jury. As applied here we note (1) that we earlier denied respondent's motion for a jury trial, thereby bringing the *Aaron* rule into play; (2) that the actual recommendation of the referee is for two concurrent sentences of four months' imprisonment without a fine, and that this is permitted by *Aaron* and *Taylor;* and (3) that in a proceeding such as this, it is this Court that imposes the sentence, not the referee, and we have the power, as in *Aaron* and *Taylor,* to reduce sentences as necessary to meet constitutional imperatives. We also reject respondent's contention that a potential fine of more than $500 is itself severe enough to entitle her to a jury trial. It is the actual fine imposed by the state not the potential fine which controls. Here, there is no actual fine. We note, further, that the Court in *Muniz v. Hoffman,* 422 U.S. 454, 477 (1975), expressly rejected the contention that "a contempt must be considered a serious crime under all circumstances where the punishment is a fine of more than $500, unaccompanied by imprisonment." *Id.* The Court there upheld a $10,000 fine imposed upon a labor union. Neither party has cited us to a case where either this Court or the

United States Supreme Court has held that the amount of a fine, potential or actual, transforms a petty offense into a serious offense. We are not ourselves aware of any such case and are not faced with the issue here. We decline to adopt such a rule in obiter dictum.

On the issue of a sixth amendment right to trial by jury, respondent also argues that we should consider the collateral consequences of our holding her in contempt of court for continuing the unauthorized practice of law. Respondent's point appears to be that she will not be able to continue her current business practices and will lose her livelihood. The loss of her livelihood, if such is the case, is unfortunate, but the fact of the matter is that she has no right to practice law without a license or to disobey this Court's injunction.

Respondent also argues that she has a right under the due process clause to be tried by a jury of her peers because the referee, the Bar and its members, and all Florida judges, have, or appear to have, a pecuniary interest in this case. We reject this argument for two reasons. First, any pecuniary interest that individual judges or lawyers have in preventing respondent from practicing law is so miniscule as to be unidentifiable. *City of Tallahassee v. Florida Public Service Commission,* 441 So.2d 620 (Fla. 1983). Indeed, based on the uncontradicted evidence from certain of her former customers that they had to retain attorneys in order to resolve problems arising from respondent's services, it may well be that respondent adds to the work load of properly licensed lawyers and judges by her unauthorized and maladroit attempts to practice law. Second, the general thrust and effect of her argument is that the state cannot use its legal system to regulate the practice of law or prohibit the unauthorized practice of law. The more specific thrust and effect of her argument is that respondent is above the law because she has anointed herself as the nemesis of the state's legal system. We reject both the general and the specific proposition as meritless.

Respondent's second objection is that the referee upheld an erroneous legal standard in determining whether respondent violated this Court's injunction. The gist of respondent's argu-

ment is that our order enjoining respondent, which incorporated *The Florida Bar v. Brumbaugh,* 355 So.2d 1186 (Fla. 1978), is unclear as to what activities are enjoined and that the referee adopted an unreasonably expansive reading of the injunction in making his findings. In considering respondent's argument, we follow the rule that the referee's findings must be approved unless they are erroneous or wholly lacking in evidentiary support. *Furman,* 376 So.2d at 381; *Florida Bar v. Wagner,* 212 So.2d 770 (Fla. 1968). In *Furman,* we relied on and quoted at length from *Brumbaugh,* a case involving a similar secretarial business, in order to determine whether respondent's activities warranted an injunction restraining her from the unauthorized practice of law, as the referee had recommended. Drawing from that extended quote, we extract only that portion dealing with enjoined activities:

> [Respondent] must not, in conjunction with her business, engage in advising clients as to the various remedies available to them, or otherwise assist them in preparing those forms necessary for a dissolution proceeding. More specifically, [respondent] may not make inquiries nor answer questions from her clients as to the particular forms which might be necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at the court hearings. Our specific holding with regard to the dissolution of marriage also applies to other unauthorized legal assistance such as the preparation of wills or real estate transaction documents. While [respondent] may legally sell forms in these areas, and type up instruments which have been completed by clients, she must not engage in personal legal assistance in conjunction with her business activities, including the correction of errors and omissions.

Furman, 376 So.2d at 381, quoting *Brumbaugh,* 355 So.2d at 1194. We then noted:

> Before the referee and before this court, Furman admitted that she did not abide by the dictates of

> *Brumbaugh.* She says that it is impossible for her to operate her "do-it-yourself divorce kit" business in compliance with this court's ruling in that case. The bar alleges that Furman has engaged in the unauthorized practice of law as previously defined by this court. The referee so found. She so admits. We believe the referee's findings are supported by the evidence.

Furman, 376 So.2d at 381. We repeat now what we said then: "Our directions could not have been clearer." *Id.* Respondent's contention that her activities were premised on a good-faith but erroneous interpretation of a vague and nonspecific order of this Court is totally meritless. Respondent's claimed uncertainty about the nature and contents of our injunction appears to arise from a deliberate and intentional misapprehension of the effect of an injunction and the nature and posture of this case. In their briefs, respondent and amicus curiae (Southern Legal Counsel, Inc., which formerly represented respondent), have favored us with dissertations on what should or should not constitute the unauthorized practice of law and what measures this Court should initiate in order to provide free legal services in civil proceedings. Respondent's brief, for example, asserts that "[w]hat has been at issue in both the prior proceedings and in this case is whether [respondent's] activities constitute the unauthorized practice of law." Not so. We are not here, in this instance, to consider the broad questions of what constitutes the unauthorized practice of law or what, if any, free legal services should be provided in civil actions. We are also not here to revisit *Brumbaugh* or *Furman* in order to determine whether the guidance and strictures therein should be amended. Had respondent initiated a motion before this Court requesting that we reexamine *Brumbaugh* and *Furman,* and perhaps modify the terms of our injunction, we would have considered such motion and the arguments presented on their merits. This is not the posture of the case. Respondent has been brought before this Court on charges of violating the

terms of an earlier injunction and will not be permitted to reargue the merits of whether the injuction should have been issued. As we said long ago:

> An injunction or restraining order must be obeyed until vacated or modified by the court awarding it, or by superior authority, or until the order or decree which granted it has been reversed on appeal, no matter how unreasonable and unjust the injunction may be in its terms, and no matter how flagrantly the rules of equity practice have been violated by the court in ordering it to issue.

Seaboard Air Line Railroad v. Tampa Southern Railroad, 101 Fla. 468, 477, 134 So. 529, 533 (1931). *See also Walker v. City of Birmingham,* 388 U.S. 307 (1967); *Howat v. Kansas,* 258 U.S. 181 (1922).

We turn then to the referee's findings that respondent contemptuously continued the unauthorized practice of law in violation of our injunction. The referee found in pertinent part:

> J. Ms. Furman prepared pleadings that went beyond just transposing information from an intake sheet to a form. She articulated that information in a fashion which raised justiciable issues regarding child custody, child support, division of property.
>
> K. Ms. Furman explained legal remedies and options to litigating parties which affected the procedural and substantive legal rights, duties, and privileges of those parties.
>
> L. Ms. Furman construed and interpreted the legal effects of Section 61.13, Florida Statutes, pertaining to shared parental responsibility.
>
> M. Ms. Furman gave advice on how to construct and prepare a financial picture that would result in increased monetary benefits or decreased monetary obligations as the case may be for the one seeking her advice,

without regard for the truth, in some instances.

N. Ms. Furman, as part of her comprehensive legal assistance, gave advice and direction on how and where to file documents with instructions on how to technically prepare and litigate the case in Court.

O. Ms. Furman was available to her customers to correct erroneous or legally deficient pleadings that she had prepared, and to remedy problems experienced by her customers during the dissolution hearing which otherwise frustrated a conclusion thereto.

P. Ms. Furman professed to her customers to have knowledge of the weight and credibility that judges attach and give to legal documents and crucial legal information and evidence.

Q. Ms. Furman participated in oral dialogues with her customers regarding such issues as money for the support of children, safety of children from abusing parents, the placement of children with the most deserving parent, available remedies and options for litigating parties, her interpretation and understanding of legal documents and pertinent statutes, the financial status of husbands and wives as they bore on their need or ability to receive or pay, the ability of her customers to comply with financial Court-ordered obligations, the importance of Court orders and complications therewith, and corrective procedures for defective dissolution proceedings.

R. Ms. Furman, in each case, was paid a monetary fee ranging up to $100.00.

Of the sixteen alleged instances of unauthorized practices of law, four were nolle prossed by the Bar. The referee's findings were based on a case-by-case examination and analysis of the

twelve instances where evidence of unauthorized practice of law was introduced. The evidence consisted of the testimony of the customers involved in the specific instance and relevant documents or forms that respondent had prepared for the customer. This evidence was almost entirely uncontradicted except for cross examination. We have reviewed the findings on these twelve charges and find that they are supported by the evidence. We find no error and approve the findings of the referee.

Respondent's third objection is that the referee improperly rejected the defense of laches regarding four alleged instances of the unauthorized practice of law. Three of the four instances are at issue; the fourth was nolle prossed. It is uncontroverted that the Bar knew of these three reported instances when it filed its first petition with this Court in September, 1982, but chose to withhold them at that time. These three instances were later included in the second petition of March, 1983. Respondent's position is that she routinely destroyed material from her files concerning these earlier alleged instances and that she was prejudiced in her defense by not having the material available to show that the customers prepared "intake forms" from which she prepared legal forms. The Bar counters that although it knew of the reported instances in September, 1982, it had not completed its investigation at that time and was not prepared to go forward with the charges. Laches is an affirmative defense which must be pleaded and proved by clear and positive evidence. *Van Meter v. Kelsey,* 91 So.2d 327 (Fla. 1956). The referee considered respondent's evidence on laches and found it insufficient to prove the defense. We agree. The evidence produced by the Bar on these three instances consisted of the testimony of the customers showing that respondent had orally interviewed them and advised them on various legal points contrary to this Court's order enjoining such activities. The preparation of intake forms could not have obviated the contemptuous conduct.

Respondent's fourth objection is that the referee erred in failing to dismiss the second rule to show cause because of

procedural irregularities. Reports of the unauthorized practice of law are investigated and disposed of in accordance with Integration Rule, article XVI. Local committees are established throughout the state to receive and investigate such reports and to forward them to The Florida Bar for further investigation, processing, and disposition. There is also a Standing Committee on Unauthorized Practice of Law which functions statewide to oversee the local committees and perform various other duties. These duties include submitting recommendations to the Bar's Board of Governors on instituting litigation, supervising such litigation, and conducting investigations of unauthorized practice on its own behalf or in concert with local committees. The charges contained in the first petition or rule were investigated by the local committee, forwarded to the Standing Committee, considered and approved by the Standing Committee, and a recommendation made to the Board of Governors that litigation be initiated. The Board of Governors approved the litigation and the chairman of the Standing Committee prepared and signed a petition to this court which commenced the litigation against respondent. The respondent does not contest the propriety of the procedures followed in filing the first petition or that the litigation was properly initiated. Respondent contends, however, that these procedures were not followed in the second petition and, for that reason, the second petition should have been dismissed. More specifically, respondent argues that the petition was not investigated by the local committee. Article XVI authorizes the Standing Committee to investigate the unauthorized practice of law either on its own or in concert with local committees. There is no requirement either in article XVI or in logic to require that all investigations be first conducted by the local committee. This is particularly so, when, as here, initial charges have been investigated and considered by the local committee, and the Standing Committee is engaged in an ongoing investigation and in supervising litigation which has already been initiated against the particular respondent.

Respondent also argues that the second petition was filed by the chairman of the Standing Committee prior to its approval by the Standing Committee and the Board of Governors. This argument is also without merit. The petition for the second rule, signed as was the first petition by the chairman of the Standing Committee, was filed with this Court on March 9, 1983. The petition was approved by the Standing Committee on March 11 at its meeting and thereafter by the Board of Governors. We did not act on the petition until March 21. Although it would have been preferable as a matter of procedural rectitude had the Standing Committee and Board of Governors approved the petition before it was actually filed, we note that litigation against respondent had been properly approved beforehand, the second petition was in the nature of an amendment to the earlier charges, and approval of the Standing Committee, and presumably the Board of Governors, was obtained prior to our acting on the petition on March 21. We are satisfied that respondent was afforded due process and that the claimed improprieties are inconsequential.

The respondent's fifth objection to the referee's report is that the referee decided on the sentence before hearing respondent's evidence in mitigation. Respondent's point is that the referee came to the hearing on October 10, 1983, with a draft of a prospective order recommending imprisonment, and the contents of this draft order indicated that he was rejecting in advance any argument that might be made in mitigation. Respondent concedes that she was given the opportunity to present evidence in mitigation, but asserts that she declined to do so because of her perception that the referee, like all judges, was biased, and, therefore, it would have been pointless. Respondent's contentions are meritless. Extensive hearings had been conducted prior to the hearing on October 10, 1983. That hearing was for the purpose of announcing the referee's findings on the merits of the case and to provide the parties the opportunity to present evidence in mitigation or aggravation in the event the referee recom-

mended a finding of contempt. Both parties had been given an opportunity to present proposed findings and were on notice of the purpose of the hearing. Predrafted orders are commonplace, and under the circumstances it was not unusual or improper for the referee to have such an order on hand at the beginning of the hearing. Respondent was given an opportunity to consider her options, did so, and chose not to testify or present evidence in mitigation. Having voluntarily waived the right to present such evidence to the referee and this Court, respondent cannot now complain that it would have been rejected anyway. Respondent's assertions have no legal merit.

Turning to the referee's recommendations, we approve the findings that respondent has violated the terms of our order enjoining and restraining her from performing the specific acts therein prohibited. We hold her in contempt of court. We, however, do not accept the referee's recommendation that she be imprisoned in the state prison for two concurrent four-month terms. Under the facts of this case, we find it more appropriate to sentence respondent to the Duval County jail for a single term of 120 days. We suspend 90 days of the 120-day term of imprisonment. When this opinon becomes final, the sheriff of Duval County is authorized and directed to take respondent into custody and to imprison her for 30 days. If respondent does not violate the terms of our continuing injunction for a period of two years, the suspended term of 90 days shall be deemed satisfied.

The terms and provisions of our previous order permanently enjoining and restraining respondent remain in effect.

Costs of these proceedings are taxed against the respondent, Rosemary Furman. Judgment for these costs is entered in favor of The Florida Bar against Rosemary Furman in the amount of $7,802.14, for all of which let execution issue.

It is so ordered.

ALDERMAN, C.J., ADKINS, BOYD, EHRLICH and SHAW, JJ., Concur

OVERTON, J., Concurs specially with an opinion

McDONALD, J., Concurs with an opinion, in which EHRLICH, J., Concurs

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

OVERTON, J., specially concurring.

I fully concur with the majority opinion.

Ms. Furman's "clerical service" is a profit-making enterprise. She has not just prepared forms for a fee; the uncontroverted evidence reflects that she has advised her customers to take actions that were contrary to their best interests and, even more egregious, has advised her customers to provide the court with false or misleading information. This conduct not only constitutes the unlawful practice of law but it also corrupts the judicial process. If Ms. Furman were a lawyer, this conduct would be a serious disciplinary offense that could lead to disbarment.

Without question this Court should do everything possible to assure that the courts are both available and affordable to all segments of the public, but that does not mean that we should allow Ms. Furman's service to continue in the manner in which she has operated it. Allowing this type of conduct to exist unchecked will not solve the problem of providing proper legal services to those with limited incomes.

Although much remains to be done, this state is aggressively moving forward in providing legal services in civil cases through simplified procedures and expanding legal aid and legal referral services, in addition to establishing a procedure to obtain funds for these legal aid services through interest on lawyers' trust accounts.

In this case there is no question that Ms. Furman has gone much further than assisting her customers in filling out the forms. The record conclusively reflects that she has willfully violated this Court's order.

McDONALD, J., concurring.

There are many professions and businesses that are regulated by law. *E.g.,* chs. 456—468, Fla. Stat. Most of these are supervised by the Department of Professional Regulation. The Florida Constitution, article V, section 15, and chapter 454, Florida Statutes, however, have granted to The Florida Supreme Court the power and authority to govern and regulate admissions of attorneys. Whatever the business or profession, the underlying policy of regulation is to protect the public and assure that those performing certain tasks are qualified to do so. Attendant to such regulation is the discipline and assessment of penalties for those who trespass into a field of service for which they are not qualified. In the case of the unauthorized practice of law that responsibility rests with this Court.

It was in this setting that we first met Ms. Furman in 1979. *The Florida Bar v. Furman,* 376 So.2d 378 (Fla. 1979). The Court analyzed activities in which she was involved and determined them to be the unlawful practice of law. It was not claimed at that time that anyone had been injured by her conduct, but the likelihood of legal injury occurring, should her conduct persist, was manifest. Hence, we enjoined her from certain conduct which we determined to be the unauthorized practice of law. An injunction is an order directed to a person to either cease doing something that is presently being done or else to do a certain thing. Such an order must be clear and concise. Ms. Furman's was.

Once a valid court order is entered, its violation may result in criminal contempt. We are a nation of laws and are expected to follow the directions of judicial orders. Otherwise court orders would have no meaning, and mass refusal to follow such orders could result in anarchy. The right, and the will, to enforce valid court orders is not only proper, but mandated. The legislature recognized this by enacting sections 38.22 and 38.23, Florida Statutes (1983), specifically authorizing the courts to punish for contempt.

We have promulgated a rule for general indirect criminal contempt, Florida Rule of Criminal Procedure 3.840. We

have also promulgated a specific rule for an indirect contempt proceeding where the complaint is the unauthorized practice of law, Florida Bar Integration Rule, article XVI. Each contains constitutional safeguards—a concise charging document, a hearing with an opportunity to confront witnesses, an opportunity to reply to the charges, and the opportunity to show mitigating circumstances. A jury trial is not necessary, but the trier of fact must be satisfied of guilt beyond a reasonable doubt. Under the Bar rule punishment is limited to a five-month incarceration and a fine of $2,500. Ms. Furman was tried pursuant to this rule, and the circuit judge, sitting as a referee, found her guilty.

Ms. Furman chose not to present any evidence, and one has to suppose what her defenses, other than the procedural claim of a right to a trial, are. Can it be said that this Court's original order was vague or impossible to understand and comply with? Is the subject of the order a matter over which this Court has no jurisdiction? Was the proof of guilt wanting? Were there any state or fedral constitutional impediments to the original order on these proceedings? The answer to all of these questions is no.

Ms. Furman's motives were commercial in nature. Her business is not to help the poor, as some questioners of this proceeding suggest, but to earn dollars. Her acts of disregarding this Court's order appear intentional. The inevitable result is a mandated finding of guilt for pursuing a course of conduct that violates an order of this Court prohibiting the unauthorized practice of law. I concur, therefore, in the majority's finding Ms. Furman in indirect criminal contempt of court.

EHRLICH, J., Concurs

Two Consolidated Original Proceedings—The Florida Bar

William O. E. Henry, President, Lakeland, Florida; Gerald F. Richman, President-elect, Miami, Florida; Jon F. Harkness, Jr., Executive Director and Catherine L. Dickson, UPL Counsel, Tallahassee, Florida of The Florida Bar; and Charles W. Arnold, Jr., Bar Counsel of Arnold, Stratford and Booth, Jacksonville, Florida,

for Complainant

William J. Sheppard, Jacksonville, Florida; and Alan B. Morrison, Public Citizen Litigation Group, Washington, D.C.,

for Respondent

Albert J. Hadeed of Southern Legal Counsel, Inc., Gainesville, Florida,

for Amicus Curiae

APPENDIX B

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, JULY 11, 1984

THE FLORIDA BAR,	**	
Petitioner,	**	CASE NOS. 63,380
vs.	**	& 62,676
ROSEMARY W. FURMAN,	**	
d/b/a NORTHSIDE	**	
SECRETARIAL SERVICE,	**	
Respondent.	**	

The motion for rehearing is denied, and our decision is *final* except for that portion relating to the amount of costs taxed against respondent. That portion of our decision determining the amount of costs to be taxed against respondent is deleted, and the issue of the amount of the costs to be taxed against the respondent is remanded to the referee for factfindings and recommendation. The referee shall promptly consider this matter and file his report with this Court. The Court will then enter a separate order taxing the amount of costs.

BOYD, C.J., ADKINS, OVERTON, ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., Concur.

The motion of respondent for stay of mandate is granted in part and the proceedings in this Court are stayed to and including August 10, 1984, to allow respondent to seek review in the Supreme Court of the United States and to obtain any further stay from that Court.

A True Copy

TEST

C

cc: Alan B. Morrison, Esquire
William J. Sheppard, Esquire

[Seal]

Sid J. White
Clerk, Supreme Court

Gerald F. Richman, Esquire
Patrick G. Emmanuel, Esquire
John T. Berry, Esquire
James P. Hahn, Esquire
John F. Harkness, Jr., Esquire
Charles W. Arnold, Jr., Esquire
Catherine L. Dickson, Esquire
Albert J. Hadeed, Esquire
Hon. A. C. Soud, Jr., Judge

APPENDIX C

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

CASE NUMBERS 62,676
63,380

vs.

ROSEMARY W. FURMAN,
d/b/a Northside Secretarial Service,
Respondent.

RECOMMENDED FINDINGS OF
FACT, JUDGMENT AND SENTENCE

October 10, 1983

A. C. SOUD,
JR. Circuit
Judge
REFEREE

INDEX

	Page*
RULING ON MOTION TO DISMISS	25a
FINDING ON LACHES DEFENSE	27a
CONCLUSIONS OF LAW	28a
FINDINGS OF FACT	30a
RULE ONE	
The Johnson Dissolution	33a
The Holland Separation	34a
The Revels Dissolution	34a
The Higgins Dissolution	35a
The Diotte Dissolution	35a
The Jamison Dissolution	36a
RULE TWO	
The Guiragossian Dissolution	36a
The Haynes Dissolution	37a
The Watson Dissolution	38a
The Smith Adoption	39a
The Iszard Dissolution	39a
The Hutto Dissolution	40a
The Workman Dissolution	40a
The Flynn Dissolution	40a
The Howell Dissolution	41a
The Wilkinson Dissolution	42a
RECOMMENDED JUDGMENT	43a
JUDICIAL SUMMARY	43a
RECOMMENDED SENTENCE	47a

*Pages renumbered to conform to Appendix pagination.

This cause was before the undersigned Referee pursuant to Rules to Show Cause issued by the Supreme Court of Florida, hereinafter referred to as Court, on November 30, 1982, and March 21, 1983.

The Rules to Show Cause allege, in part, that Rosemary W. Furman, Respondent, hereinafter referred to as Ms. Furman, violated this Court's permanent injunction prohibiting her from engaging in the unauthorized practice of law, dated November 1, 1979.

This proceeding was instituted upon Petition filed by the Florida Bar, hereinafter referred to as Bar.

The Rules to Show Cause charge that Ms. Furman violated the Court's permanent injunction by committing one or more of the following acts:

> "VII (2): Respondent is in contempt of this Court's order in that she has flagrantly continued to engage in advising clients as to the various remedies available to them; assisting clients in the preparation of forms necessary for a dissolution proceeding; making inquiries and answering questions from clients as to the particular forms which might be necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at the Court hearing; and engaging in personal legal assistance to parties seeking protection of their rights in dissolutions of marriage, property distribution, and settlement, child support obligations, child custody, and visitation, and enforcement of court orders."

The Rule to Show Cause dated November 30, 1982, asserts in Paragraphs VII 3 though [sic] 8 thereof specific instances of the unauthorized practice of law. These instances will be referred to by paragraph:

VII 3: The Johnson Dissolution

VII 4: The Holland Separation Agreement

VII 5: The Revels Dissolution

VII 6: The Higgins Dissolution

VII 7: The Diotte Dissolution

VII 8: The Jamison Dissolution

The Rule to Show Cause dated March 31 [sic], 1983, asserts in Paragraphs VII 3 through 12 thereof specific instances of the unauthorized practice of law. These instances will be referred to by paragraph:

VII 3: The Guiragossian Dissolution

VII 4: The Haynes Dissolution

VII 5: The Watson Dissolution

VII 6: The Smith Adoption

VII 7: The Iszard Dissolution

VII 8: The Hutto Dissolution

VII 9: The Workman Dissolution

VII 10: The Flynn Dissolution

VII 11: The Howell Dissolution

VII 12: The Wilkinson Dissolution

The aforementioned Rules to Show Cause appointed the undersigned Circuit Judge, Fourth Judicial Circuit, Duval County, Florida, to act as Referee for the purpose of receiving testimony and making findings with regard thereto.

The proceeding before this Court, before the undersigned Referee and the duties exercised with regard thereto are pursuant to Article XVI, Sec. III, B, Integration Rules of the Florida Bar.

The Rules to Show Cause and hearings thereon were consolidated by Order of the Referee on April 27, 1983, without objection from either party.

On June 20, 1983, and June 21, 1983, an evidentiary hearing was held on the matters alleged in the Rules to Show Cause and the issues framed in relation thereto in Answers filed by Ms. Furman.

Ms. Furman did not testify nor did she call any witnesses.

The Referee submits herewith the following recommended judgment, findings, conclusions of law, and recommended sentence.

Findings as to the existence of the unauthorized practice of law in each paragraph of each Rule will be individually addressed and a separate finding made with regard to each.

Ms. Furman has responded to the Rules to Show Cause by two avenues.

Her Answer in each instance raises the affirmative defenses of laches and asserts denials of the specific violations charged.

Her Motion to Dismiss in each instance alleges laches and Bar irregularities in the initiation of these indirect criminal contempt proceedings.

MOTION TO DISMISS—Laches

Laches is an affirmative defense which must be plead and proved, and therefore, not subject to a Motion to Dismiss.

MOTION TO DISMISS—Bar Irregularities

Bar Irregularities in initiating this proceeding as alleged in the Motion to Dismiss are based upon procedural violations stated in Article XVI. UNAUTHORIZED PRACTICE OF LAW, II B as they apply to Rule II. There are no allegations of irregularity as to Rule I.

Pertaining to Rule II, essentially, the facts are these: Article XVI. UNAUTHORIZED PRACTICE OF LAW, II B sets forth procedural steps in how the Bar can initiate indirect criminal contempt proceedings. The Bar is directed to first allow the local circuit committee to investigate all reports of unauthorized practice of law and then to make a proper report of its investigation and findings to the Standing Committee on Unauthorized Practice of Law. It is thereafter the duty of the Standing Committee to receive and evaluate circuit committee reports and make its findings and recommendations to the Board of Governors. The Board of Governors shall act upon said reports, findings, and recommendations and determine whether or not indirect criminal contempt proceedings can be initiated as may be appropriate. Indirect criminal contempt proceedings can then be initiated upon sworn Petition of the President of the Florida Bar or Chairman of Standing Committee on Unauthorized Practice of Law upon which the Court may then issue a Rule to Show Cause.

The fact gleaned from the argument of counsel, motions in support and in opposition to the Motion to Dismiss, and

depositions of Henry M. Coxe, III, Esquire, Dalton Mayo, and Catherine Dickson, Esquire, reflect that the sworn Petition giving rise to Rule II was filed on March 9, 1983. The Standing Committee did not receive and act upon the findings and recommendations of the local circuit committee until March 11, 1983, two days later, at which time they ratified retroactively the filing of the sworn Petition. The Board of Governors did not approve the initiation of contempt proceedings until March 18, 1983, at which time they ratified retroactively the filing of the sworn Petition filed on March 9, 1983. The Rule to Show Cause was issued by this Court on March 21, 1983.

This Court finds that the technical deviation from the administrative steps set forth in Article XVI UNAUTHORIZED PRACTICE OF LAW, II B, of the Integration Rule are procedural violations not so inherently prejudicial that Ms. Furman is constitutionally deprived of due process affecting her substantive rights; nor are they jurisdictional.

Florida Rules of Criminal Procedure 3.840(a)(l) state in substance,

> "the Judge, of *his own motion,* or *upon affidavit of any person* having knowledge of the facts, may issue, and sign an order directed to the Defendant, stating the essential facts constituting the criminal contempt charged . . . (emphasis added)."

The Court, therefore, could have issued on its own motion, this Rule to Show Cause irrespective of the Integration Rule requirements as there is a sworn Petition before it alleging facts by an affidavit with knowledge or upon facts received by this Court upon sworn oral testimony. *Edison v. Board,* 411 So.2d 257 (4th DCA, Fla., 1982); *In The Interest of SLT, RLT, RLT,* 180 So.2d 374 (2nd DCA, Fla., 1965).

It seems that the only constitutional safeguards ncessary to have preserved the integrity of due process for Ms. Furman was that the proceedings be instituted by the Court on its own motion or by Affidavit of any person having knowledge of the facts and that she be advised of the charge by notice so as to

accord her reasonable opportunity to meet the charges by way of defense or explanation at a hearing. *Geary v. Kelly,* 137 So.2d 262 (3rd DCA, Fla., 1962); *Phillips v. State,* 147 So.2d 163 (3rd DCA, Fla., 1962); *In Re Interest of SLT, et al., id.*

The power to charge and punish for contempt is inherent with this Court. *Florida Statutes,* Section 38.22.

Bar procedural violations, therefore, are not a bar to this indirect criminal contempt proceeding. Rule II was issued on March 21, 1983, as a result of a sworn Petition filed in this Court by the Chairman of the Standing Committee on Unauthorized Practice of Law alleging facts which would reasonably indicate the knowledge of alleged contemptuous conduct. Ms. Furman was appropriately served with a copy of the Petition and Rule to Show Cause by the Sheriff of Jacksonville, Duval County, Florida. She has been afforded opportunity to meet the charges by explanation and defense as well as represented by able counsel.

The Bar violations are procedural violation at best. Ms. Furman's right to constitutional due process has not been breached.

The Motion to Dismiss should be denied.

LACHES DEFENSE

Ms. Furman, in her Answers, has raised the affirmative defense of Laches. She contends in her Answers to the Rules that Paragraphs VII 3, 4, and 8 of Rule I and Paragraph VII 10, 11, and 12 of Rule II have been charged by the Bar with prejudicial delay. She contends that because the Bar was tardy in bringing and alleging those accusations that she is constitutionally impaired from adequately defending against those allegations by way of defense or explanation. In her Motion to Dismiss, she attacks, on the grounds of laches, Paagraphs VII, 3, 4 and 8 of Rule I and Paragraph VII, 12 of Rule II, omitting Paragraphs 10 and 11, of the latter.

At the hearing and during closing arguments, laches was asserted only against those allegations in both Rules which are alleged to have occurred in the calendar year 1980,

thereby occurring more than two years prior to the filing of the sworn Petition in which they were alleged.

The doctrine of laches seems to be a defense in such a proceeding. *The Florida Bar v. McCain,* 361 So. 2d 700 (Fla. Sup. Ct., 1978).

The only evidence presented by Ms. Furman to prove this defense was the testimony of her clients upon cross-examination and the Stipulation between herself and the Bar (Respondent's Exhibit #5), both of which affirm that the services performed as to Paragraphs VII 3, 4, and 8 of Rule I, and Paragraph VII 12 of Rule II, were brought to the attention of the Bar more than two years prior to the filing of the Bar's Petition.

No evidence was presented to prove that the Respondent was prejudiced in any way by the fact that some of the factual matters alleged in the Rules came to the Bar's attention between August and November 1980. There was no showing that the lapse of time between 1980 and the filing of the two Petitions in September, 1982, and March, 1983, was unreasonable, or otherwise impaired the Respondent and her opportunity to meet the charges by explanation or defense.

Respondent has appropriately plead laches as a defense but has not sustained it.

CONCLUSIONS OF LAW

In entering and submitting these findings, the Referee has followed the principles of law regarding the unauthorized practice of law set forth in the *Florida Bar v. Furman,* 376 So. 2d 378 (Fla. Sup. Ct., 1979); *Florida Bar v. Brumbaugh,* 355 So.2d 1186 (Fla. Sup. Ct., 1978); *State ex. rel. The Florida Bar v. Sperry,* 140 So. 2d 587 (Fla. Sup. Ct. 1962); *The Florida Bar v. American Legal and Business Forms, Inc.,* 274 So.2d 225 (Fla. Sup. Ct., 1973); and, *The Florida Bar v. Stupica,* 300 So.2d 683 (Fla. Sup. Ct., 1974).

From the *Brumbaugh* and *American* cases, a reliable synopsis of existing law is set forth, to-wit:

> Legal advice is inextricably involved in the filling

out and advice on how to use such legal forms, and therein lies the dangers of injury or danger to the public if not properly performed in accordance with law. (*American*)

. . . Instructional material should be no more objectionable than any other publication placed into the stream of commerce which purports to offer general advice on common problems, and does not purport to give a person advice on a specific problem particular to a designated or readily identified person. (*Brumbaugh*).

. . . Although there is a danger that some published material might give false or misleading information, that is not a sufficient reason to justify its total ban. (*Brumbaugh*).

. . . The tendency of persons seeking legal assistance to place their trust in the individual purporting to have expertise in the area necessitates regulation of attorney-client relationships, so as to require that persons giving such advice have at least a minimum of legal training and experience. (*Brumbaugh*).

. . . Reliance upon one, who holds herself out to have superior legal knowledge to properly prepare the necessary legal forms to dissolution proceedings, amounts to practicing law. (*Brumbaugh*).

. . . People may sell printed material purporting to explain legal practice and procedure to the public in general and may at the same time sell sample legal forms . . . That person may engage a secretarial service, typing such forms for her customers, provided that she only copy the information given to her in writing by her customers . . . She may also advertise her public activities of providing a secretarial and notary servces [sic] and sell legal forms and general printed information. (*Brumbaugh*).

. . . However, she must not, in conjunction with her business, engage in advising customers as to various remedies available or otherwise assist them in preparing these forms necessary for a dissolution proceeding. (*Brumbaugh*).

. . . Specifically, she may not make inquiries nor answer questions from her customers as to the particular forms which might be necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at the Court hearing . . . She must not engage in personal, legal assistance in conjunction with her business activities, including the correction of errors and omissions. (*Brumbaugh*)

FINDING OF FACT

The Bar's evidence proves beyond a reasonable doubt that:

A. The Supreme Court of Florida prohibited Ms. Furman's unauthorized practice of law by permanent injunction dated November 1, 1979.

B. Ms. Furman was fully apprised, noticed, and had personal knowledge of this Court's permanent injunction and the nature of the acts prohibited therein.

C. At all times between November 1, 1979, and the date of this hearing, Ms. Furman has not been and is not now licensed to practice law in the State of Florida.

D. Ms. Furman has engaged in the unauthorized practice of law in cases and for purposes hereinafter more specifically addressed on a case-by-case analysis.

E. Ms. Furman's unauthorized practice of law in violation of the Court's Order has been willful and intentional.

F. Ms. Furman, in all cases set forth below, held herself out to be one having superior legal, procedural, and substantive knowledge and expertise regarding matters pertaining to dissolutions of marriage.

G. Ms. Furman advised her customers in a manner, including newspaper advertisements, which manifests her intent that such information and advice be relied upon by her customers to initiate, sustain, and conclude legal proceedings.

H. Ms. Furman reasonably anticipated that the information or advice rendered would be relied upon by her customers knowing that such reliance would affect the legal, procedural, and substantive rights, duties, and privileges to the person or persons receiving same.

I. In each case below wherein unauthorized practice of law has been found, Ms. Furman's customers relied and acted upon such legal advice and information.

J. Ms. Furman prepared pleadings that went beyond just transposing information from an intake sheet to a form. She articulated that information in a fashion which raised justiciable issues regarding child custody, child support, division of property.

K. Ms. Furman explained legal remedies and options to litigating parties which affected the procedural and substantive legal rights, duties, and privileges of those parties.

L. Ms. Furman construed and interpreted the legal effects of Section 61.13, Florida Statutes, pertaining to shared parental responsibility.

M. Ms. Furman gave advice on how to construct and prepare a financial picture that would

result in increased monetary benefits or decreased monetary obligations as the case may be for the one seeking her advice, without regard for the truth, in some instances.

N. Ms. Furman, as part of her comprehensive legal assistance, gave advice and direction on how and where to file documents with instructions on how to technically prepare and litigate the case in Court.

O. Ms. Furman was available to her customers to correct erroneous or legally deficient pleadings that she had prepared, and to remedy problems experienced by her customers during the dissolution hearing which otherwise frustrated a conclusion thereto.

P. Ms. Furman professed to her customers to have knowledge of the weight and credibility that judges attach and give to legal documents and crucial legal information and evidence.

Q. Ms. Furman participated in oral dialogues with her customers regarding such issues as money for the support of children, safety of children from abusing parents, the placement of children with the most deserving parent, available remedies and options for litigating parties, her interpretation and understanding of legal documents and pertinent statutes, the financial status of husbands and wives as they bore on their need or ability to receive or pay, the ability of her customers to comply with financial Court-ordered obligations, the importance of Court orders and complications therewith, and corrective procedures for defective dissolution proceedings.

R. Ms. Furman, in each case, was paid a monetary fee ranging up to $100.00.

Whether or not, Ms. Furman's advice was correct or incorrect, or whether or not the recipients suffered actual or imagined harm, or whether or not the customer referred a complaint to the Bar is not an issue in any sense of the word.

Her willful and intentional disobedience to a lawful Court order is, however, the central issue.

The cases brought to the attention of the Court by the Bar upon which the Referee will make specific findings have been examined and analyzed in each individual case as to the existence of the unauthorized practice of law therein without relation or reference to the other cases. Thereafter, the cases have been considered cumulatively to determine whether or not the advice, information, and acts rendered by Furman in each instance reflects a pattern of willful and intentional violations of the Court's Order rising to the level of an indirect criminal contempt of the Court.

RULE ONE

THE JOHNSON DISSOLUTION—Paragraph VII 3, TT.56

Michael Johnson, a Duval County resident, was served with dissolution papers filed by his wife in Baker County. Mr. Johnson went to Ms. Furman's office seeking assistance regarding the Petition. Mr. Johnson told Ms. Furman about discrepancies in residencies and also that the child for whom support was requested was not his inasmuch as the wife was not pregnant when she left.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman advised Johnson of his obligation to support the baby since it was conceived during marriage though he and his wife were separated. She urged him to agree to pay support for the child rather than contest it in an expensive, protracted hearing.

(b) Ms. Furman told him it would cost between $50.00 and $100.00 to get the case removed from Baker County to Duval County.

(c) Ms. Furman prepared Answer to Petition for Disolution of Marriage (Plaintiff's Exhibit #4).

(d) Ms. Furman's Answer, in fact, denied the paternity of the husband.

(e) Ms. Furman prepared this Answer in a contested dissolution.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE HOLLAND SEPARATION—Paragraph VII 4, TT.41

In the summer of 1980, Mrs. Holland was married and had three children. She desired an apartment in a low-income housing project in Orange Park, Florida, and thought she needed proof of a divorce to qualify. Mrs. Holland contacted Ms. Furman and told her of her need for divorce papers.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman advised that separation papers, not divorce papers, would be satisfactory. Ms. Furman delivered a Separation Agreement (Plaintiff's Exhibit #2), wherein wife was to have custody of the children and the husband was to pay $75.00 per month for child support. It also provided for reasonable visitation, exclusive use of vehicles, and other rights. No legal proceeding was instituted.

(b) Ms. Furman advised that the document had sufficient effect in the event she needed police officers' assistance for protection from her husband.

(c) Ms. Furman was paid $25.00 by Holland.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE REVELS DISSOLUTION—Paragraph VII 5, TT.211

In October, 1981, Ralph Revels was married and had two children. Wanting a divorce, he went to Ms. Furman to seek advice. He asked her advice on the procedure on getting a divorce and how long it would take. He told Ms. Furman that his wife was consenting to it. Later, he went again to Ms. Furman advising that his wife could live in the home and have custody of their children.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman advised that a divorce could be filed even if the wife was not willing and would take approximately twenty-eight days to obtain a Final Judgment.

(b) Ms. Furman gave him oral and written instructions on how to proceed in getting the divorce (Plaintiff's Exhibit #13).

(c) Ms. Furman rendered assistance in filling out the Financial Affidavit, specifically advising amounts to insert for expense items. Ms. Furman advised to insert amounts for rent and food even though none were being paid (Plaintiff's Exhibit #14).

(d) Ms. Furman advised that it was best his Financial Affidavit show the least amount of money left over after expenses, otherwise his wife would get more money.

(e) Ms. Furman advised that judges pay no particular attention to financial affidavits and, therefore, are not really important.

(f) Ms. Furman advised that having $7.00 a month left over after the Temporary Order on Faculties was entered was nothing to worry about and that they were just trying to scare him. She advised that he could straighten it out the next time he went to Court.

(g) Ms. Furman advised that he did not need an attorney even though the judge advised him to get one.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE HIGGINS DISSOLUTION—Paragraph VII 6

There was no evidence offered by the Bar in support of this allegation.

FINDING: NO UNAUTHORIZED PRACTICE OF LAW

THE DIOTTE DISSOLUTION—Paragraph VII 7, TT.98

In April, 1982, Mr. and Mrs. Diotte desired to get a divorce. Mrs. Diotte went to Ms. Furman for assistance. After deter-

mining there were children in the divorce, Ms. Furman handed her an intake sheet on which Mrs. Diotte furnished to Ms. Furman factual items such as names, addresses, and a proposed amount of child support.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman prepared a Petition for Dissolution of Marriage, Answer and Waiver, a Judgment and Sentence, and Motion for Final Hearing, a Uniform Child Custody Affidavit, and Final Judgment (Plaintiff's Exhibit #6). Ms. Furman selected the forms to be used and only transposed information from intake sheet to pleading documents.

(b) Ms. Furman provided a Financial Affidavit to be completed by Mrs. Diotte and advised her to place zeros under expenses since she was living with her family.

(c) Ms. Furman gave written notices on how to file her case at the Courthouse and how to proceed at Final Hearing.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE JAMISON DISSOLUTION—Paragraph VII 8

There was no evidence offered by the Bar in support of this allegation.

FINDING: NO UNAUTHORIZED PRACTICE OF LAW

RULE TWO

THE GUIRAGOSSIAN DISSOLUTION—Paragraph VII 3, TT.273

In November, 1982, Mr. and Mrs. Guiragossian came to Ms. Furman to obtain a divorce because they knew of her from advertisement in the newspaper (Plaintiff's Exhibit #9). The Guiragossians filled out an intake sheet which provided factual data. At the time of the Final Hearing, Mrs. Guiragossian, who filed Answer and Waiver, appeared. The Petitioner, Mr. Guiragossian, did not and a Final Judgment was not entered.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman prepared Petition for Dissolution of Marriage, Answer and Waiver, Joint Stipulation and Motion for Final Hearing, Uniform Child Custody Affidavit, and two Financial Affidavits (Plaintiff's Exhibit #16).

(b) Ms. Furman prepared for Mrs. Guiragossian a counter-petition, a Non-Military Affidavit, and a Motion for Default when Mrs. Guiragossian returned to her offices for assistance on how to remedy the difficulty of her husband's non-appearance at final hearing.

(c) Ms. Furman also discussed and advised of the effects of Section 61.13, Florida Statutes, explaining the concept of shared parental responsibility which was not fully explained nor understood.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE HAYNES DISSOLUTION—Paragraph VII 4, TT.193

In October, 1982, Charles Haynes was married and had three children. He went to Ms. Furman after seeing her advertisement in the newspaper. Ms. Furman told him that a divorce could be contested or uncontested and how much it would cost. He returned the next day with his wife and filled out an intake sheet providing factual data. After the pleadings were filed and before the scheduled final hearing, the wife began abusing the children and he wanted to change the prepared Stipulation so that custody would be with the husband instead of the wife. The Final Judgment was entered awarding custody of the children to the wife. Several months later, this custody was changed back to the father on child abuse grounds.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman prepared a Petition for Dissolution of Marriage, Answer and Waiver, Uniform Child Custody Affidavit, Joint Stipulation and Motion for Final Hearing, Financial Affidavits, and Final Judgment (Plaintiff's Exhibit #12).

(b) Ms. Furman advised of the effects of Section 6.13,

Florida Statutes, explaining the concept of shared parental responsibility.

(c) Ms. Furman provided instructions on where to file the case and how to conduct the hearing.

(d) When she was notified by Haynes about the wife's child abuse, Ms. Furman explained to him available legal options and remedies and discouraged him from then requesting custody of the children.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE WATSON DISSOLUTION—Paragraph VII 5, TT.122

In November, 1982, Watson went to Ms. Furman to obtain a divorce and filled out an intake sheet providing factual data (Plaintiff's Exhibit #1). He represented that it would be an uncontested divorce and paid $50.00. He thought he had agreed to pay $35.00 a week for two children. The Stipulation provided $35.00 per week per child. He filed his papers, set up a hearing, and the Final Judgment was denied. He thereafter called Ms. Furman for a further explanation of Section 61.13, Florida Statutes, regarding shared parental responsibility.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman prepared a Petition for Dissolution of Marriage, Answer and Waiver, Financial Affidavit, Uniform Child Custody Affidavit, Joint Stipulation and Motion for Final Hearing, and Final Judgment, the latter of which was not filed (Plaintiff's Exhibit #7).

(b) Ms. Furman explained the meaning and legal effect of Section 61.13, Florida Statutes, regarding shared parental responsibility which was never understood by either party.

(c) Ms. Furman provided instructions on where to file the case and how to conduct the hearing.

(d) Ms. Furman was called by the husband after the dissolution was denied. She once again gave further explanation as to the legal effect of Section 61.13 of the Florida Statutes.

(e) Ms. Furman advised that the dispute of $35.00 per week per child or for both children per week was inconse-

quential in that it would not matter what was on the paper because the judge would ultimately decide the amount.

(f) Ms. Furman then again explained Section 61.13, Florida Statutes, to the wife.

(g) Ms. Furman advised Mrs. Watson to put zero in the income and expense columns of the Financial Affidavit because she was living with her parents.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE SMITH ADOPTION—Paragraph VII 6

There was no evidence offered by the Bar in support of this allegation.

FINDING: NO UNAUTHORIZED PRACTICE OF LAW

THE ISZARD DISSOLUTION—Paragraph VII 7, TT.164

In September, 1982, Mr. Iszard was married and had two children. He went to Ms. Furman for assistance in obtaining a divorce. He filled out an intake sheet (Respondent's Exhibit #3), and paid $50.00. He and his wife owned a house, car, boat, and motorcycle.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman prepared a Petition for Dissolution of Marriage, Answer and Waiver, Uniform Child Custody Affidavit, Joint Stipulation and Motion for Final Hearing, and a proposed Final Judgment (Plaintiff's Exhibit #10).

(b) Ms. Furman advised as to the meaning and legal effect of Section 61.13, Florida Statutes, regarding shared parental responsibility.

(c) Ms. Furman assisted in preparation of the Financial Affidavit and advised him not be concerned about listing his assets in the part dealing with Assets and Liabilities because it was "none of their damn business." Ms. Furman advised to put zeros in those columns.

(d) Ms. Furman provided instruction on where to file the case and how to conduct the hearing (Plaintiff's Exhibit #13).

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE HUTTO DISSOLUTION – Paragraph VII 8, TT.237

In July, 1982, the Huttos contacted Ms. Furman for a divorce and paid $50.00. It was agreed that Mr. Hutto would have custody of the children. The Huttos filled out an intake sheet setting forth factual data.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman advised Mr. Hutto that it was unusual for the wife to agree for the husband to have custody of the children.

(b) Ms. Furman prepared a Petition for Dissolution of Marriage, Answer and Waiver, Joint Stipulation and Motion For Final Hearing, Uniform Child Custody Affidavit, and proposed Final Judgment, which was not filed (Plaintiff's Exhibit #15).

(c) Ms. Furman prepared an Amended Joint Stipulation and Motion for Final Hearing to include a waiver of Section 61.13, Florida Statutes, relating to shared parental responsibility, and provided him with some pamphlet purporting to explain the law regarding Section 61.13. This pamphlet has not been introduced into evidence by either party.

(d) Ms. Furman explained the legal effects of the Aswer and Waiver to Mrs. Hutto.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE WORKMAN DISSOLUTION—Paragraph VII 9

There was no evidence offered by the Bar in support of this allegation.

FINDING: NO UNAUTHORIZED PRACTICE OF LAW

THE FLYNN DISSOLUTION—Paragraph VII 10, TT.306

In November, 1981, Mrs. Flynn went to Ms. Furman to get a divorce, and provided factual data on an intake sheet (Respondent's Exhibit #4). The husband was not agreeable to

the divorce. The parties lived together at the same address. Mrs. Flynn insisted that the divorce be obtained as soon as possible because she had a job waiting for her in California.

This was the second marriage for both parties in that they had been previously married to each other in January, 1969, and divorced.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman advised that Mrs. Flynn could get a divorce without the consent of her husband.

(b) Ms. Furman prepared the Petition for Dissolution of Marriage, Answer and Waiver, Joint Stipulation and Motion for Final Hearing, Financial Affidavits, Uniform Child Custody Affidavit, and Final Judgment (Plaintiff's Exhibit #17).

(c) Ms. Furman advised that Mrs. Flynn would have to use a different address for her husband even though they were living together.

(d) Ms. Furman advised Mrs. Flynn to refrain from telling the Court she would be taking the children out of the State of Florida.

(e) Mr. Furman advised that inserting and using the first marriage date, when the parties had been subsequently divorced and remarried to each other, was not significant.

(f) Ms. Furman advised that on portions of the Financial Affidavits dealing with Assets that a zero could be inserted because it was nobody's business, not even the Court's.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE HOWELL DISSOLUTION—Paragraph VII 11, TT.143

In December, 1981, Mr. Howell went to Ms. Furman to get a divorce. He gave to Ms. Furman information concerning property that he owned in his name alone. Mr. Howell also showed Ms. Furman an antenuptial agreement entered into by he and his wife. After he filed the Petition for Dissolution of Marriage, he was served with a Counter-Petition by his wife's attorney. He took the Counter-Petition to Ms. Furman and provided factual data on an intake sheet (Respondent's Ex-

hibit #2) to answer it. He paid Ms. Furman $100.00 for her services.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman advised Mr. Howell as to the legal effect of an antenuptial agreement and his reliance on it.

(b) Ms. Furman prepared a Petition for Dissolution of Marriage and Answer to Counter-Petition to which Howell was advised to attach the antenuptial agreement (Plaintiff's Exhibit #8) as an appropriate legal procedure to secure his rights therein.

FINDING: UNAUTHORIZED PRACTICE OF LAW

THE WILKINSON DISSOLUTION—Paragraph VII 12, TT.84

In May, 1980, Mrs. Aljets, formerly known as Catherine Wilkinson, contacted Ms. Furman about getting a divorce. She and her husband agreed that the two children would be divided between husband and wife and questioned the legality of such a decision. She supplied Ms. Furman with factual data on an intake sheet.

IN RENDERING LEGAL ASSISTANCE:

(a) Ms. Furman prepared Petition for Dissolution of Marriage, Answer and Waiver, Joint Stipulation and Motion for Final Hearing, Uniform Child Custody Affidavit, Financial Affidavits, and a Final Judgment (Plaintiff's Exhibit #5), and gave instructions on where to file and how to conduct the hearing.

(b) Ms. Furman advised Mrs. Aljets that a division of the children would be acceptable, advising her that it was done all the time without securing more information and background about the parents or children.

FINDING: UNAUTHORIZED PRACTICE OF LAW

RECOMMENDED JUDGMENT

No just cause being shown why she should not be held in contempt of the Court, the Referee recommends that the Respondent, Rosemary W. Furman, be found guilty of indirect criminal contempt for the willful and intentional violation of this Court's permanent injunction prohibiting her from the unauthorized practice of law.

JUDICIAL SUMMARY

On November 1, 1979, the Supreme Court of Florida ordered Rosemary Furman not to engage in the unauthorized practice of law. Ms. Furman was fully aware of the nature of the acts prohibited by the Court at that time. She is once again in Court, now, for disobeying that Order in material respects.

The evidence has clearly and persuasively proved that Ms. Furman has continued to advise customers as to legal remedies available. She has assisted in drafting forms necessary for dissolution of marriage proceedings and bringing those cases to issue. She has made inquiries to and answered questions from her customers as to particular forms necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at the final hearing. Ms. Furman has engaged in personal legal assistance to parties regarding the custody of their children, financial support for those children, visitation rights to and from those children, property distribution and settlement, and the enforcement of court orders.

In some of these instances, Ms. Furman advised her customers to lie under oath—to conceal material and critical information from the court—and to misrepresent and distort the truth upon sworn financial affidavits affecting the needs and abilities of the parties.

What distinguishes Ms. Furman from the ordinary citizen or neighbor who gives advice, is that while performing these acts of legal assistance, she has projected and advertised herself as one having superior legal knowledge as to pro-

cedural and substantive law. She had full knowledge of the probability that her customers would rely on her advice and instructions in initiating, sustaining, and concluding legal proceedings affecting their vested legal rights. Indeed, she was perceived as one having legal expertise.

The facts are that more often than not her advice to customers was bad, her forms defective, all of which they paid for—leaving her customers frustrated and helpless.

How does one explain or justify her intentional omission of true or insertion of untrue living expenses affecting one's need to the necessities of life; or how does one condone, under any theory, her advice to ignore the safety of an abused child when living under threat; or how does one rationalize her suggestion to remove a child beyond the state without telling the court or other parent; or how does one tolerate Ms. Furman's urging to intentionally misstate the wife's true residence or date of marriage on court documents. Clearly, the answer is, "You don't."

The manner and method by which Ms. Furman has practiced law has had a deleterious effect on the courts—the law—the legal profession—the institution of marriage—and the Respondent, herself. She has shown a penchant for distorting and concealing truth if it meant deriving some economic or personal benefit for her customer. She precipitates a distrust of state trial judges by advising that their decisions and judgments are based upon something outside of the evidence. She maligns the motives of able practitioners of law by contending that her cheap legal assistance is synonymous with legal competence. She has contributed to the devaluation of the traditional marriage and family by encouraging that husband-wife and parent-child relations be negotiated and bartered on the open market for over the counter prices. She has bolstered the misconception that dissolution of marriage proceedings are so routine—so perfunctory—so impersonal, that neither truth nor evidence bears any relation to them.

Not one time has the evidence demonstrated that Ms. Furman ever suggested to her customer possible

reconciliation—postponement of the dissolution—or family and marital counseling.

Now, Ms. Furman argues, in essence, that the type of service she offered was so basic and simplistic that it was ludicrous to require a customer to engage the services of an attorney. It is this very theory which renders her position untenable. Her argument that cheapness is an equal measure for competence is simply without merit.

Dissolutions of marriage by consenting spouses and their access to the courts without the expense of a lawyer has a noble sounding ring with a tinge for popular attraction. But that thought completely ignores the fundamental fact that consent in a case involving child custody, child support, or division of property can be induced by the fear or abuse of a spouse or given at a time of great emotional stress.

Ms. Furman's position does tolerate and encourage the surrender of a child, the relinquishment of financial support and the divesting of real and personal property, by consent wrongfully obtained.

The possible sacrificing of such valued and vested rights, under this theory of "easy access to the courts" is simply too great a price to pay.

Her argument that the customers she represents are poor, possibly illiterate, is all the more reason to require that Ms. Furman not deviate one iota from the permissible guidelines for legal secretaries or form sellers. It is this customer who most needs the skills of a trained and experienced lawyer, either one of his own choosing, or one furnished by the local Bar without charge.

The ability and training of one licensed to practice law is not merely knowing the legal forms to be used or how best to fill them out; nor is it merely knowing available remedies to assert or defend legal rights, duties and privileges; but it is equally crucial that an advisor be able to detect, analyze, and address all possible legal issues and potential conflicts that may surface between litigating parties. It calls for the legal training and experience of one who can assist the litigant in making rational, calculated, and sober decisions.

It is in this arena that Ms. Furman is found wanting in education, training, experience, ability, competence, and perception.

The Respondent, Rosemary Furman, has continued her unauthorized practice of law with personal knowledge and in violation of the Supreme Court Order prohibiting her to do so. The sole issue before us is Ms. Furman's compliance with the law. Her disobedience of that Order has been willful, intentional, and deliberate.

It is the integrity of that Supreme Court Order that is both at *issue* and at *stake.*

These questions must be asked and answered. Has Ms. Furman transgressed the rule of law? Has she imposed her will above the lawful order of this state's highest court? Has she given her monetary gain and business profits greater value than the law which governs us all? The answer on all points is—YES! Regrettably, she has demonstrated in her war against those licensed to administer the law in this state and while flying under the flag of "access to the courts", that regarding the law, the only restraint that exists to her is that which exists in her own mind.

Herein, she has shown that when the rule of law runs contrary to her vested business interests, she will be governed only to the degree that *she* perceives that duty to be. It is one thing to be ambitious—it's another thing to be defiant!

Rosemary Furman may mean different things to different people. To the legal profession she may appear to be a nemesis—an intruder—a recalcitrant. To the poor, the illiterate—the man on the street—she may seem a fighter—champion.

But one thing she is not—no matter how perceived—and no matter how righteous her cause—and that—she is not above the law.

It is neither the duty nor the responsibility of the Referee in this proceeding to address diversionary issues of public interests, such as the need for and role of persons like Ms. Furman in a community; or the pecuniary interests the Bar has in

protecting its members. Suffice it to say that the likes of many Rosemary Furmans in a community would cause irreparable and catastrophic damage to the legal rights of men, women, children and their property.

It is absolutely necessary, in a time when the law, the courts, the Bar, and legal profession are under increasing attack and criticism, as are many other traditional institutions institutions [sic] in this country, that all of them be at their best; that no cause or reason be given to support unjust accusations—that they find themselves always meriting the honor and respect enjoyed for generations. It mandates that the legal profession be diligent in what it does—sincere in what it speaks—competent in what it practices—and exemplary in the way it lives—conscious always of performing that which it promises.

The Referee is fully aware these contempt proceedings against Ms. Furman may be unpopular to a segment of the community. It is not easy judicial exercise to suggest punishment for one who is perceived to champion the cause of "the little man".

But for two centuries, we have agreed to a Constitution and to live by the law. No one of us has a right to violate rules we all share.

RECOMMENDED SENTENCE

The Referee, having recommended that the Respondent, Rosemary Furman, be adjudged guilty of indirect criminal contempt of the Supreme Court's Order dated November 1, 1979, opportunity was afforded her and the Bar to present mitigating and aggravating circumstances affecting any sentence recommended.

This hearing was held on Monday, October 10, 1983, at 1:30 P. M., in the Duval County Courthouse, Jacksonville, Florida.

The Referee has fully considered the suitability of such sentencing alternatives as probation, community control, community service, and/or a fine. None seems geared to

remedy that which lies at the very heart of this contemptuous conduct.

If it was thought for one moment that Ms. Furman's disobedience was inadvertent, or committed in good faith or while laboring under an ill-advised interpretation of the Supreme Court's Order, then any of the alternative sentencing mesures would be adequate and purposeful. In that event, any would provide the rehabilitation and corrective impact needed.

However, Rosemary Furman's violation of the law has been glaring and deliberate—bold and defiant!

Her blatant disregard of that Order has continued since 1980 and there is no reason whatsoever to anticipate that she will refrain from such conduct in the foreseeable future.

Incarceration provides the only effective means to punish her for past violations and, at the same time, deter her from similar ones in the future.

Supervision under probation or community control could not exceed six months; probation personnel are not equipped to duly monitor her secretarial activities and legal assistance.

Neither is a fine of $2500 palatable, nor does it provide sufficient negative impact to convince Ms. Furman of the necessity of adherence to the law in this instance.

Imprisonment, however, would provide that strength—that sting—to preserve the integrity of the Court's Order as well as bring her into specific compliance with it.

After carefully considering and weighing all the evidence, the totality of the circumstances, credibility of witnesses and arguments of counsel, it is, therefore,

RECOMMENDED:

1. That in Case Number 62,676, the Respondent, Rosemary W. Furman, be adjudged guilty of indirect criminal contempt and sentenced to four months in the state prison.

2. That in Case Number 63,380 the Respondent, Rosemary W. Furman, be adjudged guilty of indirect criminal contempt and sentenced to four months in the state prison. The sentences shall run concurrently.

DONE AND ORDERED, in Open Court, at Jacksonville, Duval Cunty, Florida, this 10th day of October, 1983.

/s/ A.C. Soud, Jr.
A.C. SOUD, JR.,
Circuit Judge

Original to: Sid J. White,
Clerk Supreme Court of Florida
Supreme Court Building
Tallahassee, FL 32301

Copies to:

C. Wendell Martin, Deputy Clerk
Circuit Court—Civil Division
Duval County Courthouse
Room 103
Jacksonville, FL 32202

James P. Hahn, Esquire
Post Office Box 38
Lakeland, FL 33802

Catherine L. Dickson, Esquire
Staff Counsel
The Florida Bar
Tallahassee, FL 32301

Henry M. Coxe, III, Esquire
Chairman, Unauthorized Practice
of Law Committee
204 Washington Street
Jacksonville, FL 32202

Charles W. Arnold, Jr., Esquire
Special Counsel, Unauthorized Practice
of Law Committee
2508 Gulf Life Tower
Jacksonville, FL 32207

Stanley Spring, Esquire
Staff Counsel
The Florida Bar
Tallahassee, FL 32301

Rosemary W. Furman, Respondent
1105 Edgewood Avenue
Jacksonville, FL 32208

William J. Sheppard, Esquire
215 Washington Street
Jacksonville, FL 32202

Alan B. Morrison, Esquire
Suite 700
2000 "P" Street, Northwest
Washington, D.C. 20036

APPENDIX D

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,	)	
	)	
Petitioner,	)	
	)	Case Nos. 62,676,
v.	)	63,380
	)	
ROSEMARY W. FURMAN, d/b/a NORTHSIDE SECRETARIAL SERVICE,	)	
	)	
Respondent.	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given, pursuant to Rule 10 of the Rules of the Supreme Court of the United States, that, pursuant to 28 U.S.C. § 1257(2), Respondent Rosemary W. Furman hereby appeals from the Order of the Supreme Court of Florida dated April 26, 1984, holding her in indirect criminal contempt of court, as modified by the Court's Order dated and entered on July 11, 1984, which denied in part and granted in part Respondent's motion for rehearing.

Respectfully submitted,

/s/ Alan B. Morrison

Alan B. Morrison
Public Citizen Litigation Group
2000 P Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 785-3704

FILED
SID J. WHITE
JUL 23 1984
CLERK, SUPREME COURT
By /s/
Chief Deputy Clerk

William J. Sheppard, Esq.
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

Attorney for Respondent
Rosemary W. Furman

July 19, 1984

CERTIFICATE OF SERVICE

I, Alan B. Morrison, one of the attorneys for Respondent Rosemary W. Furman, do hereby certify that all parties required to be served have been served and specifically that on the 19th day of July, 1984, I mailed a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, by first class mail, postage prepaid, to

1. Charles W. Arnold, Jr.
   2508 Gulf Life Tower
   Jacksonville, Florida 32207

   and

   Catherine L. Dickson
   Staff Counsel
   The Florida Bar
   Tallahassee, Florida 32301

   Attorneys for the Petitioner

2. Albert J. Hadeed
   Southern Legal Counsel, Inc.
   Suite A, 115 N.E. 7th Avenue
   Gainesville, Florida 32601
   Attorney for the *Amicus Curiae*

In addition, because this appeal calls into question the validity of the Florida Bar Integration Rule, article XVI, III, B, 2, under the Sixth Amendment to the United States Constitution, a copy thereof has been served on Jim Smith, Attorney General of Florida, The Capitol, Tallahassee, Florida 32301, since 28 U.S.C. § 2403(b) may be applicable.

/s/ Alan B. Morrison
Alan B. Morrison
Attorney for Respondent

APPENDIX E

INTEGRATION RULE

Article XVI. Unauthorized Practice of Law

* * *

III. Litigation

B. Indirect Criminal Contempt Proceeding

1. An indirect criminal contempt proceeding for unauthorized practice of law shall be prosecuted in the following manner:

a. Upon receiving a sworn petition of the president of The Florida Bar, or the chairman of the Standing Committee on Unauthorized Practice of Law, alleging facts indicating that a person, firm or corporation is or may be unlawfully practicing law, and containing a prayer for a contempt citation, the Court may issue an order directed to the respondent, stating the essential allegations charged and requiring respondent to appear before a referee appointed by the Court to show cause why respondent not be held in contempt of this Court for unauthorized practice of law. The referee shall be a circuit judge of the State of Florida. The order shall specify the time and place of the hearing, and a reasonable time shall be allowed for preparation of the defense after service of the order on the respondent.

b. Any respondent, who is determined to be insolvent by the referee, shall be entitled to the appointment of counsel. In proceedings for the determination of insolvency, there shall be a presumption of solvency, and the respondent shall have the burden of rebutting the presumption by competent

proof. The following facts shall be prima facie evidence of solvency:

(1) If the respondent has been released on bail in the amount of fifteen hundred dollars or more;

(2) If the respondent has no dependents and his gross income exceeds seventy-five dollars per week; the income limit shall be increased by ten dollars per week for each of the first two dependents of the defendent and by five dollars per week for each dependent beyond the first two;

(3) If the defendent owns cash in excess of $300.

c. The court shall also consider the following additional circumstances in determining insolvency:

(1) The probable expense and burden of defending the case;

(2) The ownership of, or equity in, any tangible or intangible personal property or real property or the expectancy of an interest in any such property by the respondent; and

(3) The amount of debts owed by the respondent or debts that might be incurred by the respondent because of illness or other misfortunes within his family.

d. Venue for the hearing before the referee shall be in the county where the respondent resides or where the alleged offense was committed, whichever shall be designated by the Court.

e. The respondent, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars or answer such order by way of explanation or defense. All motions and the answer shall be in writing. A respondent's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

f. The Court or referee may issue an order of arrest of the respondent if the Court or referee has

reason to believe the respondent will not appear in response to the order to show cause. The respondent shall be admitted to bail in the manner provided by law in criminal cases.

g. The respondent shall be arraigned at the time of the hearing before the referee, or prior thereto upon his request. A hearing to determine the guilt or innocence of the respondent shall follow a plea of not guilty. The respondent is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and confront witnesses against him. The respondent may testify in his own defense. No respondent may be compelled to testify. A presumption of innocence shall be accorded the respondent, and The Florida Bar, which shall act as prosecuting authority, must prove guilt of the respondent beyond a reasonable doubt.

h. The referee shall hear all issues of law and fact and all evidence and testimony presented shall be transcribed.

i. At the conclusion of the hearing, the referee shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the respondent has been found and adjudicated guilty.

j. Prior to the pronouncement of a recommended sentence upon a judgment of guilty, the referee shall inform the respondent of the accusation and judgment against him and afford him the opportunity to present evidence of mitigating circumstances. The recommended sentence shall be pronounced in open court and in the presence of the respondent.

k. The judgment and recommended sentence, upon a finding of "guilty," together with the entire record of proceedings shall then be forwarded to this Court for approval, modification or rejection

based upon the law. The respondent may file objections, together with a supporting brief, to the referee's judgment and recommended sentence within thirty days of the date of filing with the Court of the referee's judgment, recommended sentence, and record of proceedings. The Florida Bar may file a responsive brief within ten days after service of respondent's brief. The respondent may file a reply brief within five days after service of the Florida Bar's responsive brief.

2. The punishment for an indirect criminal contempt under this Article shall be by fine, not to exceed $2,500, imprisonment of up to five months, or both.

3. Nothing set forth herein shall be construed to prohibit or limit the right of the Court to issue a permanent injunction in lieu of or in addition to any punishment imposed for an indirect criminal contempt.

Added May 19, 1965 (175 So.2d 530). Amended Nov. 5, 1969 (227 So.2d 665); July 17, 1974, effective Aug. 1, 1974 (297 So.2d 304); April 30, 1975 (317 So.2d 65); July 9, 1975 (326 So. 2d 7); Jan. 29, 1981 (399 So.2d 951).

APPENDIX F

SUMMARY OF STATE COURT RULINGS

The state courts that have dealt with the question of where to draw the line on what fine is large enough to require a jury have reached very diverse results. Many of the decisions are based on interpretations of state constitutions, and none of them squarely holds that a trial by jury is required under the Sixth Amendment whenever a fine of $500 is permitted. A recent decision upholding the right to a jury trial in *all* criminal cases is *Hendershot v. Hendershot*, 263 S.E.2d 90 (W. Va. 1980). The charge there was criminal contempt for violating a custody order in a divorce decree, and the court noted the principal state decisions adopting this position, which include decisions from Alaska, Minnesota, Vermont and Maine. *Id.* at 96, n. 10.

New Hampshire has rejected that approach, instead looking to its own statutes, which provide for a jury trial in all civil cases of more than $500 and adopted that as the maximum fine without a jury, but seems to hold that a reduction in the fine can remedy the defect, at least where there is no prison contemplated. *State v. Morrill,* 465 A.2d 882 (1983). The District of Columbia Court of Appeals, in *Matter of Evans*, 411 A.2d 984 (1980), also relied on a local statute in setting a $300 limit for fines without a jury in contempt cases.

In South Dakota the Supreme Court has reviewed the issue twice in recent years, concluding the first time that the possibility of any jail time triggered the right to a jury, *State v. Wikle,* 291 N.W.2d 792 (1980), and then modifying that, in a traffic case, to exclude cases in which the trial judge announces in advance that no jail time will be imposed. *State v. Auen,* 342 N.W.2d 236 (1984). It did not rule on the level of fine giving rise to a jury trial (the amounts assessed were $20 and $50, respectively) but noted in *Wikle* that it was not inclined to adopt a $500 line, while recognizing that at some amount a defendent would be entitled to a jury trial "because

it could be viewed as a gauge of the ethical and social judgments of the community." 342 W.W.2d at 794.

Rhode Island has not ruled on the issue except to note that fines below $500 would not trigger the right to a jury trial. *State v. Vinagro,* 433 A.2d 945 (1981). Similar approaches were taken in Texas, *Ex Parte Werblud,* 536 S.W.2d 542, (Tex. 1976), and in Arizona, *State ex rel Baumert v. Superior Ct., Maricopa County,* 127 Ariz. 152, 618 P.2d 1018 (1980), where a conviction for disorderly conduct without a jury was upheld where the maximum sentence was six months in jail plus a fine of $1000. Washington, on the other hand, has given jury trials where the fine is $500, as a matter of state law. *City of Pasco v. Mace,* 98 Wash. 2d 87, 653 P.2d 618 (1983).

Indeed, there is even disagreement about whether a case by case or bright line approach is preferable. New York has taken the latter position in *Morgenthau v. Erlbaum,* 464 N.Y.S. 2d 392, 59 N.Y.2d 143, 451 N.E.2d 150, 156, *cert denied,* 104 S.Ct. 486 (1983), although doing so only on the question of jail time. Nevada has opted for a more flexible approach, rejecting the $500 line established by the Ninth Circuit, in which it is located, and allowing a non-jury trial where there was a possible sentence of six months or a fine of $1000. *State v. Smith,* 672 P.2d 631 (1983).

Office-Supreme Court, U.S.
FILED
OCT 5 1984
ALEXANDER L. STEVAS,
CLERK

NO. 84-196

in the Supreme Court of the United States

OCTOBER TERM, 1984

ROSEMARY FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE,
Appellant,

vs.

THE FLORIDA BAR,
Appellee.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS OR AFFIRM

BRUCE S. ROGOW
Nova University Law Center
3100 S.W. 9th Avenue
Ft. Lauderdale, Florida 33315
(305) 522-2300

CATHERINE L. DICKSON
Assistant Staff Counsel
The Florida Bar
Tallahassee, Florida 32301
(904) 222-5286

CHARLES W. ARNOLD, JR.
Suite 2508
Gulf Life Tower
Jacksonville, Florida 32207
(904) 396-5231

Counsel for Appellee

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

INTRODUCTION 1

STATEMENT OF THE CASE AND FACTS 2

THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

A. The Right to a Jury Trial Is Governed By the Sentence Imposed. Since The Actual Sentence In This Case Was Less Than Six Months Imprisonment, There Is No Substantial Question Posed By the Appellant's Demand For A Jury Trial 6

B. The "Biased Judiciary" Due Process Demand For A Jury Trial Is Devoid Of Precedential Support, Devoid of Record Support, And Presents No Basis For Requiring This Court's Exercise of Jurisdiction 9

CONCLUSION 13

TABLE OF AUTHORITIES

Cases	Pages
Bloom v. Illinois, 391 U.S. 194 (1968)	7
Cheff v. Schnackenberg, 384 U.S. 373 (1966)	7
Codispoti v. Pennsylvania, 418 U.S. 506 (1974)	7
Douglass v. First National Realty Corp., 543 F.2d 894 (D.C. Cir. 1976)	8
Girard v. Goins, 575 F.2d 160 (8th Cir. 1978)	8
Marshall v. Jerrico, Inc., 446 U.S. 238 (1980)	10
Mayberry v. Pennsylvania, 400 U.S. 455 (1971)	11
Muniz v. Hoffman, 422 U.S. 454 (1975)	7
Richmond Black Police Officers v. City of Richmond, 548 F.2d 123 (4th Cir. 1977)	8
Taylor v. Hayes, 418 U.S. 488 (1974)	*passim*

TABLE OF AUTHORITIES (Continued)

Cases	Pages
The Florida Bar v. Furman, 376 So.2d 378 (Fla. 1979)	2, 11
The Florida Bar v. Furman, 451 So.2d 808 (Fla. 1984)	1
Tumey v. Ohio, 273 U.S. 510 (1927)	10
United States v. Gedraitis, 690 F.2d 351 (3rd Cir. 1982)	8
United States v. PATCO, 678 F.2d 1 (1st Cir. 1982)	8

in the

Supreme Court

of the

United States

OCTOBER TERM, 1984

ROSEMARY FURMAN, d/b/a
NORTHSIDE SECRETARIAL SERVICE,
Appellant,

vs.

THE FLORIDA BAR,
Appellee.

On Appeal from the
Supreme Court of Florida

MOTION TO DISMISS OR AFFIRM

INTRODUCTION

The Florida Supreme Court unanimously concluded that Rosemary Furman had engaged in unauthorized practice of law in Florida, thereby violating an earlier order prohibiting her from engaging in such conduct. Finding Ms. Furman to be in contempt, the Florida Supreme Court sentenced her to 120 days imprisonment, but suspended 90 days of that term. *The Florida Bar v. Furman*, 451 So.2d 808,816 (Fla. 1984); J.S.App.1a,14a.

Ms. Furman does not quarrel here with the facts of her misconduct. She seeks plenary review in this Court based upon her claims that she was entitled to a jury trial either because (1) she faced a maximum penalty of five months incarceration and a $2500 fine, or (2) because "local judges . . . and the Justices of the Florida Supreme Court" were too biased to try her. Jurisdictional Statement at 12,16.

As we demonstrate below, Ms. Furman's first contention is without merit because the right to a jury trial is measured by the actual sentence imposed, which in this case falls far short of requiring a jury trial.

Her second contention is devoid of any precedential support and is built upon *ad hominem* assumptions of malice which are unsupported by the record.

What the record does reflect is a fair, patient and sensitive attempt by the Florida Supreme Court to contend with a person who, for personal economic gain, practiced law without a license.

STATEMENT OF THE CASE AND FACTS

There is no real dispute regarding the case or the facts. In 1979 the Florida Supreme Court found that Rosemary Furman, doing business as Northside Secretarial Service, engaged in the unauthorized practice of law. The Court "permanently enjoined and restrained [her] from further engaging in the unauthorized practice of law in the State of Florida." *The Florida Bar v. Furman*, 376 So.2d 378,382 (Fla. 1979), *appeal dismissed*, 444 U.S. 1061 (1980).

No fine or sentence of incarceration was imposed. Indeed, the Court used Ms. Furman's case to call for a study of improving the delivery of legal services in Florida. *Id.*, 376 So.2d at 382. Thus, while being firm, but not punitive with Ms. Furman, it also acknowledged her role as a catalyst for change.

Ms. Furman did not change. In September, 1982 and March, 1983 the Florida Bar alleged a total of sixteen instances of her continued unauthorized practice of law, and in November, 1982 and March, 1983 the Florida Supreme Court issued rules to show cause based upon those allegations. J.S.App.2a.

A Florida Circuit Judge was appointed as a referee to make factual findings and recommendations to the Florida Supreme Court. His extensive Recommended Findings of Fact, Judgment and Sentence found twelve instances of unauthorized practice, concluding that Ms. Furman's violations were "glaring and deliberate" and in "blatant disregard" of the Florida Supreme Court's 1979 injunction. J.S.App.48a. The reference recommended a sentence of four months in the state prison. *Id.*[1]

---

[1]Since the facts of Ms. Furman's violations are not contested here, we do not dwell upon them. They are detailed in the Appendix to the Jurisdictional Statement at pp.33a-42a. The Florida Supreme Court summed them up this way:

> The uncontradicted testimony of former customers of respondent was that she advised them to falsify information in marriage dissolution papers and to conceal relevant information from the courts acting on the dissolution petitions. Her purported reasons were various: its none of their damn business, they don't pay any attention to the information, or you'll (either) get less or give more money in the dissolution judgment.

The Florida Bar v. Furman, 451 So.2d at 810; J.S.App.2a.

The Florida Supreme Court reviewed the findings on the twelve charges and found them to be supported by the evidence, J.S.App.11a. However the Court rejected the referee's recommended punishment and instead sentenced Ms. Furman to 30 days imprisonment in the Duval County jail, plus a 90 day suspended sentence conditioned upon no violations of the injunction for a two year period. J.S.App.14a.

The Florida Supreme Court also rejected Ms. Furman's argument that she was entitled to a jury trial. Utilizing *Taylor v. Hayes*, 418 U.S. 488,495 (1974), the Court concluded that the penalty actually imposed did not exceed six months incarceration and thus did not require a jury trial under applicable decisions of this Court. And the Florida Supreme Court rejected her jury trial argument based on judicial bias. Characterizing it as a claim that she could not be judged by members of the Bar "because she has anointed herself as the nemesis of the state's legal system", the Court found the proposition to be meritless. J.S.App.6a.

A concurring Justice reiterated the Court's commitment to adequate delivery of legal services, and then summed up Ms. Furman's continuing commitment to her course of conduct:

> Ms. Furman's "clerical service" is a profit making enterprise. She has not just prepared forms for a fee. The uncontroverted evidence reflects that she has advised her customers to take actions that were contrary to their best interests and, even more egregious, has advised her customers to provide the court with false or

misleading information. This conduct not only constitutes the unlawful practice of law, but it also corrupts the judicial process. If Ms. Furman were a lawyer this conduct would be a serious disciplinary offense that could lead to disbarment.

451 So.2d at 816; J.S. App.15a (Overton,J., specially concurring).

We turn to the reasons why Ms. Furman's demand for a jury trial has no merit, and why her appeal should be dismissed, or the decision below affirmed.

THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

A. The Right To A Jury Trial Is Governed By The Sentence Imposed. Since The Actual Sentence In This Case Was Less Than Six Months Imprisonment, There Is No Substantial Question Posed By The Apellant's Demand For A Jury Trial

As stated by Ms. Furman, the question presented is whether a proceeding for indirect criminal contempt which carries a maximum penalty of five months and a $2500 fine requires a trial by jury.

The actual punishment imposed upon Ms. Furman was 120 days imprisonment, with 90 days suspended. Thus under *Taylor v. Hayes*, 418 U.S. 488,496 (1974), the question really presented is whether a trial by jury is required in an indirect criminal contempt proceeding where the sentence imposed was 120 days of imprisonment, with 90 days suspended.

The answer to the proper formulation of the question is that no jury trial is required. In *Taylor v. Hayes* the Court wrote:

> [I]n the absence of legislative authorization of serious penalties for contempt a state may choose to try any contempt without a jury if it determines not to impose a sentence longer than six months . . . We remain firmly committed to the proposition that "criminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty

involved." *Bloom v. Illinois*, [391 U.S. 194] at 211; cf. *Argersinger v. Hamlin*, 407 U.S. 25,30 (1972).

Id., 418 U.S. at 496.

In this case the maximum permissible penalty did not exceed six months imprisonment. Therefore *Bloom v. Illinois*, 391 U.S. 194 (1968), forecloses the jury trial claim on that front.

Since the actual sentence imposed did not exceed six months, *Taylor v. Hayes*, *supra*, *Bloom v. Illinois*, 391 U.S. at 211, *Codispoti v. Pennsylvania*, 418 U.S. 506,511 (1974), and *Cheff v. Schnackenberg*, 384 U.S. 373,380 (1966), totally foreclose the jury trial claim on any front.

The potential for a $2500 fine is thus irrelevant under the unbroken line of cases which focus attention on the sentence actually imposed.

Neither *Muniz v. Hoffman*, 422 U.S. 454 (1975), nor any of the Court of Appeals decisions responding to jury trial claims when fines were imposed for criminal contempt, undermine the *Taylor v. Hayes* "actual sentence" standard. Indeed, they confirm that the sentence

actually imposed is the benchmark for determining the right to a jury trial.[2]

Therefore, since no fine was actually imposed upon Ms. Furman, her attempt to use her exposure to a

---

[2]In *Muniz*, the actual sentence imposed upon a large labor union was $10,000. No jury trial was required. The Court's capsulation of the constitutional doctrines included the actual sentence view that "lacking legislative authorization of more serious punishment, a sentence of as much as six months in prison, plus normal periods of probation, may be imposed without a jury trial. . ." 422 U.S. at 476.

In *Douglass v. First National Realty Corp.*, 543 F.2d 894,903 (D.C.Cir.1976), the Court obviated the need for a jury trial in a $5,000 fine case by "adjust[ing] the fine downward to $500." In *Richmond Black Police Officers v. City of Richmond*, 548 F.2d 123, 128 (4th Cir.1977), the Court wrote "since the penalty which actually was imposed [$250] squares with the definition of 'petty' contempt", the failure to accord a jury trial was harmless.

In *Girard v. Goins*, 575 F.2d 160,165 (8th Cir.1978), the Court concluded that fines against individuals ranging from $2500 to $10,000 required a jury trial, but that "if the state court reduces the fines to a non-serious level, then a jury trial would not be required." In *United States v. PATCO*, 678 F.2d 1,5 (1st Cir.1982), the Court acknowledged it "could perhaps cure [the jury trial problem] by reduction of the fine to a non-serious level", although other errors required reversal, negating that need. Finally, in *United States v. Gedraitis*, 690 F.2d 351,354 (3rd Cir.1982), the Court hewed to this Court's view: "The Supreme Court has held that the severity of the penalty actually imposed is the best indication of the seriousness of the offense."

The other cases cited in the Jurisdictional Statement at footnotes 2 and 4 do not involve contempt. The lesson of the contempt cases is unequivocal—the right to a jury trial is always tested by the actual sentence imposed.

$2500 fine as the basis for her jury trial claim is completely devoid of merit.

Simply put, every relevant decision of this Court requires that a contemnor's claim to a jury trial be considered in light of the sentence actually imposed upon the transgressor. The sentence actually imposed here was 120 days imprisonment, with 90 days suspended. There is no precedential support for Ms. Furman's position. Her appeal should be dismissed for want of a substantial federal question or, in the alternative, the Florida Supreme Court's decision, based upon the *Taylor v. Hayes* doctrine, should be affirmed.

B. The "Biased Judiciary" Due Process Demand For A Jury Trial Is Devoid Of Precedential Support, Devoid Of Record Support, And Presents No Basis For Requiring This Court's Exercise Of Jurisdiction.

The thrust of Ms. Furman's due process claim is that she could not get a fair trial "because of the longstanding adversary relation between herself on the one hand and the Florida Bar, the local judges in Duval County, and the Justices of the Florida Supreme Court on the other." J.S. at 16.

No facts support her blanket indictment of the Florida legal system. No case even intimates that an integrated Bar's attempt to enforce rules against the unauthorized practice of law renders the state's legal system impotent *vis à vis* a continuing protagonist. If such a theory were accepted, brazen violaters would fare better than timid ones, encouraging bold transgressions.

The various cases cited in support of the undisputed general proposition that likelihood or appearance of bias triggers due process protections prove nothing here. The due process question is whether there has been a "procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused." *Tumey v. Ohio*, 273 U.S. 510,532 (1927); *Marshall v. Jerrico, Inc.*, 446 U.S. 238,242 (1980); *Taylor v. Hayes, supra* at 501.

Certainly, the notion that the integrity of all seven Justices of the Florida Supreme Court would be affected by the economic impact of Ms. Furman's violation of "rules defining the extent of the Bar's monopoly", J.S. at 16, is absurd. In fact, she fails to cite a single factual instance of Florida Supreme Court bias or antipathy during this proceeding, preferring to focus her attention upon "the trial judges of Duval County [and] members of the Bar . . . who filed every one of the charges against her. . ." J.S. at 17. Thus, she finds bias emanating from the fact that another circuit judge "sat in at [a] status conference"; that the referee found Ms. Furman acted wilfully and maliciously for pecuniary gain, although the Bar did not press for those conclusions; and that the referee had prepared his factual views before the sentencing, leaving blank the sentence recommendation. This is her evidence "that she could not have a fair trial except before a jury of her peers." J.S. at 18.

Aside from the fact that the Florida Supreme Court was the final arbiter of Ms. Furman's fate—not the referee, or the members of the Bar, or a circuit judge

who sat in at a status conference – all of her grievances fall far short of passing the evidentiary test for bias which implicates due process concerns.[3]

In *Taylor v. Hayes*, the trial judge had continually displayed an "unfavorable personal attitude toward petitioner, his ability, and his motives", thus requiring a different judge to consider the contempt. 418 U.S. at 501-502. In *Mayberry v. Pennsylvania*, 400 U.S. 455,465 (1971), the trial judge had been "vilified" and "cruelly slandered." In *Tumey v. Ohio, supra*, the judicial officer's salary was partially paid by fees and costs imposed by him.

In this case Ms. Furman complains that the Florida Supreme Court "hand picked" the referee, and that in the 1979 original proceeding the Court requested the Bar to recommend a sentence, although the order to show cause sought only injunctive relief. J.S. at 17. So advised, the 1979 Court deleted the reference to contempt, imposed no sentence, and used the case as a springboard for improving the delivery of legal services. *Furman v. Florida Bar, supra*, 376 So.2d at 382.

---

[3]We do not imply that any of Ms. Furman's allegations against the referee and the Bar connote prejudice. That the Bar did not seek a pecuniary gain or a wilfullness ruling reflects its patience. While Ms. Furman downplays her profit, she does not dispute her $50 per client economic interest, J.S. at 17, nor does she ever dispute her continuing interest in providing legal advice in Florida without a license. J.S. *passim*. The referee therefore had a basis for his findings. The referee's patience at sentencing is reflected by his having distributed the draft of his recommendations to Ms. Furman's counsel and providing a recess for her to respond, an invitation which she declined. J.S.App.3a. Given his undisputed findings, leaving blank the sentence denotes openmindedness, not prejudgment.

On these facts, Ms. Furman seeks to liken this case to *Hayes*, *Mayberry* and *Tumey*. She paints on the wrong canvas. This picture is clear. Neither the facts nor the law demand plenary review by this Court.

CONCLUSION

For the foregoing reasons the appeal should be dismissed or the decision of the Florida Supreme Court summarily affirmed, and, as to Appellant's Point II, certiorari denied.

Respectfully submitted,

BRUCE S. ROGOW
Nova University Law Center
3100 S.W. 9th Avenue
Ft. Lauderdale, Florida 33315
(305) 522-2300

CATHERINE L. DICKSON
Assistant Staff Counsel
The Florida Bar
Tallahassee, Florida 32301
(904) 222-5286

CHARLES W. ARNOLD, JR.
Suite 2508
Gulf Life Tower
Jacksonville, Florida 32207
(904) 396-5231

Counsel for Appellee

October, 1984